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Consolidated Laws of New York
Annotated

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THE CONSOLIDATED LAWS OF NEW YORK
ANNOTATED

The books of this edition are arranged and numbered as follows:

1. Report of Consolidators and Treatise on Statutes and Statutory Construction
2. Constitution of New York Annotated, Constitution of the United States, Declaration of Independence and Magna Charta
3. Agricultural (*Repealed*)
— Agriculture and Markets (*See Farms and Markets*)
3a. Arbitration
4. Banking
5. Benevolent Orders
6. Business Corporations
7. Canal
7a. City Home Rule
7a. City Local Option (*Repealed*)
8. Civil Rights
9. Civil Service
9a. Condemnation
10. Conservation
10a. Co-operative Corporations
11. County
12. Debtor and Creditor
13. Decedent Estate
14. Domestic Relations
15. Drainage (*Repealed*)
16. Education
17. Election
18. Executive
18a. Farms and Markets (*Now Agriculture and Markets*)
— General Associations (*See Joint-Stock Association*)
19. General Business
20. General City
21. General Construction
22. General Corporation
22a. General Highway Traffic
23. General Municipal
24. Highway
25. Indian
26. Insanity (*Now Mental Hygiene*)
27. Insurance
28. Joint-Stock Association (*Now General Associations*)
29. Judiciary
30. Labor
31. Legislative
32. Lien
33. Liquor Tax (*Repealed*)
34. Membership Corporations
34a. Mental Deficiency (*Repealed*)
34a. Mental Hygiene
35. Military
36. Navigation
37. Negotiable Instruments
38. Partnership
39. Penal
40. Personal Property
41. Poor
42. Prison
43. Public Buildings
44. Public Health
45. Public Lands
46. Public Officers
47. Public Service Commission
47a. Public Works
48. Railroad
49. Real Property
50. Religious Corporations
51. Salt Springs
52. Second Class Cities
53. State Boards and Commissions
54. State Charities
54a. State Departments
55. State Finance
56. State
57. State Printing
58. Stock Corporation
59. Tax
60. Tenement House
61. Town
62. Transportation Corporations
63. Village
64. Workmen's Compensation
65. Unconsolidated Laws
66. Complete Table of Laws Repealed
67. General Index

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in cop. New York. Laws, statutes etc. Compilations

THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

AS AMENDED TO THE CLOSE
OF THE REGULAR SESSION OF
THE LEGISLATURE OF 1916

Compiled under the Editorial Supervision of
WILLIAM M. McKINNEY

BOOK 36
Navigation Law

KFN
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1917

EDWARD THOMPSON COMPANY
Northport, New York
1917

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STATE OF NEW YORK
OFFICE OF THE SECRETARY OF STATE } ss:

In pursuance of the authority vested in me, by section 932 of the Code of Civil Procedure, I, Francis M. Hugo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Secretary of State, at the Capitol in the City of Albany, this 5th day of July, 1916.

[L. S.]

FRANCIS M. HUGO,
Secretary of State.

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The annotations in this book close with the cases reported in the following volumes:

219 New York
173 Appellate Division
97 Miscellaneous
162 New York Supplement

The Supplement will cover decisions from these points.

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CONSOLIDATORS' NOTES ON THE NAVIGATION LAW

General Note

Navigation Law is a consolidation of the live provisions of "Navigation Law," L. 1897, Ch. 592 [chapter 30 of the "General Laws"], as amended to the close of the session of 1907. To this has been added such provisions of general statutes which come within the classification and scope of "Navigation Law," as above cited.

The "Navigation Law" [chapter 30 of the "General Laws"] brought together the general statutory provisions relating to the navigation of the waters under state control, except the canals. The term "navigation" was used in the broadest sense and was made to include not only the regulation of vessels passing over the waters, but also the subjects of obstructions to navigation, the use of streams as public highways, tidewater navigation and the pollution of waters. Many of the provisions are special in their nature, while others might be placed otherwise than in a "navigation" law. To do this, however, and to reform the law would require a revision and make the work beyond the scope permitted by the statute creating the Board of Statutory Consolidation. Within the few years last past the use of the waters of the state has been much increased by the use of motor boats which, bearing the same relation to waterways that the automobile does to highways, require clear and uniform regulation. A competent and complete revision of the Navigation Law appears advisable.

The report of the Board of Statutory Consolidation is dated June 26, 1907, and the Consolidated Laws were enacted in 1909. The legislation for 1908 was examined by the board and any changes that affected the laws as reported in 1907 were embodied in the laws as reported by the board to the legislature of 1909.

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NAVIGATION LAW

LAWS 1909, CHAP. 42

AN ACT relating to navigation, constituting chapter thirty-seven of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

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NAVIGATION LAW

CHAPTER 37 OF THE CONSOLIDATED LAWS

Article 1. Short title; definitions (§§ 1, 2).
2. General provisions (§§ 3–39-f).
3. Hudson river navigation (§§ 40–47).
4. Other waters of the state (§§ 50–56).
5. Tidewater navigation (§§ 60–66).
6. Rivers and streams as public highways (§§ 70–75).
7. Wrecks (§§ 80–93).
8. Application; laws repealed; when to take effect (§§ 100–102).

ARTICLE 1

SHORT TITLE; DEFINITIONS

Section 1. Short title.
2. Definitions.

§ 1. Short title.* This chapter shall be known as the "Navigation Law."

This section was derived from the Navigation Law of 1897, § 1, as amended by L. 1903, ch. 420, § 1 pt. The remainder of Navigation Law of 1897, § 1, as amended by L. 1903, ch. 420, § 1 is now covered by section 100.

Application of chapter: see infra, § 100.

Navigation corporations generally: see TRANSPORTATION CORPORATIONS LAW, § 10 et seq.

Exemption of certain vessels from taxation: see TAX LAW, § 4.

Exemption of employees on vessels from jury and military duty: see JUDICIARY LAW, §§ 546, 635, 720; MILITARY LAW, § 1.

Acting as port-warden without authority: see PENAL LAW, § 1502.

Fictitious bills of lading, receipts and vouchers: see PENAL LAW, § 360.

Penalty for failure to issue bill of lading: see PENAL LAW, § 367.

Making false manifest: see PENAL LAW, § 1508.

Destroying invoice: see PENAL LAW, § 1509.

Nature of right of navigation.—The right of navigation is a public right, belonging, not to towns, villages, or cities as corporations, but rather to all

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* The original Navigation Law was chapter 30 of the General Laws, being L. 1897, ch. 592.

For inspection and running of steamboats on Chautauqua lake see L. 1884, ch. 339, as amended by L. 1890, ch. 376; L. 1891, ch. 529.

Irondequoit bay a navigable water of the United States for certain purposes, see Act of June 25, 1890, ch. 616, 26 Stat. L. 180; Federal Statutes Annotated, title *Steam Vessels*.

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citizens in severalty. Cox v. New York, (1898) 26 Misc. 177, 55 N. Y. S. 74. But the doctrine must be regarded as settled that, whatever the rights of the owner of lands bordering on or within the waters of a navigable river, they must yield when the powers of government are called into exercise for a general public benefit in the improvement of navigation, and this is of course true whether the power is exercised by the federal or the state government. Loss may result to the individual, but he is remediless at law. He can have no private rights in the river which are exempt from the requirements of a public or governmental necessity. Slingerland v. International Contracting Co., (1901) 169 N. Y. 60, 61 N. E. 995, 56 L. R. A. 494, affirming 43 App. Div. 215, 60 N. Y. S. 12; Sage v. New York, (1897) 154 N. Y. 61, 47 N. E. 1096, 61 A. S. R. 592, 38 L. R. A. 606, affirming 10 App. Div. 294, 41 N. Y. S. 938.

§ 2. Definitions. As used in this chapter, the term "master" includes every person having for the time, the charge, control or direction of a steamboat or vessel; and the term "steamboat" or "steam vessel," includes every vessel propelled in whole or in part by steam.

This section was derived from the Navigation Law of 1897, § 2.

Term "master" as used in reference to excursion vessels: see infra, § 35.

Term "master" as used in Canal Law: see CANAL LAW, § 170.

Private vessel.—A boat chartered by a party for the season and used by him as his private yacht, is undoubtedly a private vessel within the meaning of the law. Op. Atty.-Gen. (1903) 411, 412.

Tow boats as within Navigation Law.—It would seem that boats employed by barge canal contractors, hired for towing purposes come under the regulations of the navigation laws. Op. Atty.-Gen. (1909) 828.

Tonnage.—Tonnage, in our law, is a vessel's internal cubical capacity in tons of one hundred cubic feet each, to be determined in the manner prescribed by Congress. Inman Steamship Co. v. Tinker, (1876) 94 U. S. 238, 24 U. S. (L. ed.) 118.

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ARTICLE 2

General Provisions

Section 3. Duties of superintendent of public works.
4. Inspectors; appointment; qualifications; terms of office and compensation.
5. Duties and powers of inspectors.
6. Inspection and test of boilers.
7. Certificate of inspection.
8. Number of passengers carried.
9. Construction of steamboats.
10. Stairways and gangways.
11. Sailing rules.
12. Lights on vessels.
13. Steam fire pump.
14. Life boats.
15. Life preservers; axes; buckets.
16. Interference with safety valve.
17. Licenses.
18. Lamps.
19. Names of vessels.
20. Method of landing passengers.
21. Engine stopped.
22. Certain inflammable or explosive articles not to be carried.
23. Racing.
24. Inability to provide licensed officers.
25. Liability of owner.
26. Copy posted.
27. Annual report.
28. Persons employing steamboats to receive no compensation.
29. Duties of manufacturers of marine boilers.
30. Accidents.
31. Repairs.
32. Vessel owners to notify inspectors.
33. Penalties.
34. Fees for inspections and licenses.
35. Construction of excursion vessels.

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Section 36. Regulations for the conduct of regattas.
37.* [Motor boats, defined; classes.]
38.* [Motor boats, lights to be carried.]
39.* [Motor boats, whistles to be carried.]
39-a.* [Motor boats, life preservers.]
39-b.* [Motor boats, fire extinguishers; anchors.]
39-c.* [Motor boats, inspection.]
39-d.* [Motor boats, penalties, powers of inspectors.]
39-e.* [Special inspectors.]
39-f.* [Motor boats, copy of law and rules to be carried.]

§ 3. Duties of superintendent of public works. The superintendent of public works shall superintend the administration of the provisions of this article, appoint the inspectors provided for in this article, and exercise supervision over them in the performance of their duties so far as the same relate to the administration and enforcement of the provisions of this article. During such periods of the year as in the judgment of the superintendent of public works, the services of the inspectors provided to be appointed by this article shall not be needed in the administration of the provisions of this article, he may, upon request of the commissioner of labor, for temporary periods, transfer such inspectors to the department of labor, and during the periods in which said inspectors are so transferred, they shall be subject to the jurisdiction of the commissioner of labor and subject to detail by him as experts in the administration of the labor law. The necessary traveling expenses of said inspectors while acting under the jurisdiction of the commissioner of labor shall be paid from the funds appropriated for the administration of the department of labor, and their salaries shall be paid, as hereinafter provided, by the superintendent of public works, their vouchers to be approved by the commissioner of labor.

This section was derived from the Navigation Law of 1897, § 3, as amended by L. 1907, ch. 520, § 1.

Public printing.—There is nothing in the Navigation Law inconsistent with section 72 of the Executive Law, and it is the duty of the superintendent of public works to respect its provisions and to give printing to the public printer, or at least, not to give it to any one else. Even where the principal part of the work consisted in engraving the fine plate on which the printing

*As enacted these sections had no headings, and headings have been added for facility of reference.

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was done, the engraving being a necessary incident to the printing, the work should be done by the public printer. If the provision of the Executive Law relative to the public printing does not authorize such engraving then the superintendent of public works should limit his orders to a less expensive style of printing. People v. Morgan, (1899) 45 App. Div. 86, 60 N. Y. S. 1109, reversing 27 Misc. 572, 58 N. Y. S. 275, affirmed (1900) 161 N. Y. 643, 57 N. E. 1120.

Jurisdiction over tug boats.—A tug boat is neither a factory nor a "mill, workshop or other manufacturing or business establishment" within the meaning of the Labor Law even when liberally construed for the purpose of protecting workmen and especially minors employed where machinery is used. So, tug boats are not under the jurisdiction of the commissioner of labor but under that of the superintendent of public works under the Navigation Law. Shannahan v. Empire Engineering Corp., (1912) 204 N. Y. 543, 98 N. E. 9, 44 L. R. A. (N. S.) 1185, affirming 140 App. Div. 946, 125 N. Y. S. 1144.

§ 4. Inspectors; appointment; qualifications; terms of office and compensation. The superintendent of public works shall, from time to time, appoint two inspectors of steam vessels, one of whom shall have a practical knowledge of the management of steam vessels by an experience of at least five years as a licensed master and pilot of steam vessels, and the other of whom is experienced in the construction and use of boilers, engines and their appurtenances, and who shall be otherwise properly qualified to perform the duties prescribed by this article. Each of said inspectors shall hold office during the term of office of the superintendent appointing them.

Each inspector shall receive an annual salary of three thousand dollars, to be paid monthly by the state treasurer, on the warrant of the comptroller.

Each inspector shall receive his actual and necessary traveling expenses upon a verified statement of such expenses duly audited by the superintendent of public works.

If the office of inspector becomes vacant, the superintendent shall fill such vacancy by the appointment of a person to serve for the remainder of such unexpired term.

The superintendent of public works may remove such inspectors at any time.

This section was derived from the Navigation Law of 1897, § 4.

For United States regulations relating to appointment and qualifications of United States inspectors see U. S. R. S. §§ 4415, 4416; Federal Statutes Annotated, title *Steam Vessels.*

Qualifications for holding office: see PUBLIC OFFICERS LAW, § 3.

Vacancies, resignations and removal from office: see PUBLIC OFFICERS LAW, §§ 30, 31, 35.

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§ 5. Duties and powers of inspectors. The inspectors shall annually, or oftener if they have good cause to believe it reasonable, inspect every steam vessel engaged in carrying passengers for hire, or towing for hire, examine carefully her hull, boats and other equipments, and they may require such changes, repairs and improvements to be adopted and used as they may deem expedient for the contemplated route. They shall also fix the number of passengers that may be transported. The inspectors shall also, whenever they or either of them deem it expedient, visit any vessel licensed under this article, and examine into her condition for the purpose of ascertaining whether or not any party thereon, having a certificate from said inspectors, has conformed to and obeyed the conditions of such certificates, and the provisions of this article; and the owner, master, pilot, captain or engineer of such vessel shall answer all reasonable questions, and give all the information in his or their power, in regard to said vessel, her machinery and the manner of managing the same. In case of damage by fire or by explosion, or by means of an electrical apparatus, the inspectors may investigate the cause thereof, and if found by them to have been occasioned by a violation of any of the provisions of this article, or of the orders, regulations and requirements of said inspectors, they shall so certify to the district attorney of the county where such violation occurred, together with the names of the persons guilty thereof and of the witnesses. The inspectors shall also make such inspection, examination and test of all vessels other than steam vessels carrying passengers or freight for hire, or towing for hire, and their apparatus and machinery, as will enable them to determine whether they can safely be used in navigation. They shall also make such inspection, examination and test of naphtha launches and electric launches, and their apparatus and machinery, as will enable them to determine whether they can be safely used in navigation. The inspectors provided for in this article are authorized to make further rules and regulations applying generally to all vessels, or especially to one or more of them, and in framing rules for the government of managers and employees of boats, the said inspectors shall, as far as practicable, be governed by the general rules and regulations prescribed by the United States board of supervising inspectors of steam vessels.

This section was derived from the Navigation Law of 1897, § 5, as amended by L. 1903, ch. 420, § 1.

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For United States regulations relating to duties and powers of United States inspectors, see U. S. R. S., §§ 4417, 4418, Federal Statutes Annotated, title *Steam Vessels.*

Annual report of inspectors: see infra, § 27.

Cited.— This section was cited in Op. Atty.-Gen. (1915) 335. See infra, § 39-c, note.

§ 6. Inspection and test of boilers. The inspectors shall examine the boilers of all steam vessels, carrying passengers or freight for hire, or towing for hire, before the same shall be used, and shall make such examination at least once in every year thereafter. They shall determine from their examination, and the data submitted by the manufacturers of each of said boilers, the pressure of steam which it is safe for the boiler to carry, and shall apply to the boiler a hydrostatic test, using a pressure of fifty per centum greater than the working pressure to be allowed; but should said inspectors be of the opinion that such boiler by reason of its construction or material will not safely allow so high a working pressure, they may fix the working pressure of such boiler at less than two-thirds of said test pressure; and no boiler or pipe, or any of the connections therewith, shall be approved which is made in whole or in part of bad material, or is unsafe in its form, or dangerous from defective workmanship, age, use or other cause. In addition to the hydrostatic test as herein provided, the inspectors may cause a hammer test to be made and an internal examination of such boiler or boilers so tested, whenever deemed necessary. Any boiler may be drilled at the bottom of shell or boiler, and also at such other points as the inspectors may direct, to determine the thickness of such material at those points, and the general condition of such boiler or boilers at the time of inspection and the steam pressure allowed shall be determined by such ascertained thickness and general condition of the boiler. They shall also see that all connections to the said boiler or engines are of suitable material, size and construction; and that the boiler, machinery and appurtenances are such as may be employed with safety in the service to be performed. They shall also satisfy themselves that the safety valves are of suitable dimensions, and are properly adjusted, so as to allow no greater pressure than the maximum amount prescribed by them; and that there is a sufficient number of gauge cocks properly attached to the boiler, so as to indicate the height of water therein; and suitable steam gauges to correctly show

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the pressure of steam carried; and as to any other matter connected with such steam vessel or the machinery thereof, that to said inspectors shall appear necessary for the safety of her passengers and crew. [1]All boilers shall have a factor of safety of not less than four and five-tenths.

This section was derived from the Navigation Law of 1897, § 6, as amended by L. 1903, ch. 420, § 1. It was amended to read as above by L. 1913, ch. 765, § 1. For the application of this section see section 100, infra.

For United States regulations relating to inspection and test of steam boilers, see U. S. R. S., § 4418, Federal Statutes Annotated, title *Steam Vessels.*

Duties of manufacturers of marine boilers: see infra, § 29.

Repairs to boiler: see infra, § 31.

Unauthorized pressure and generation of unsafe amount of steam: see PENAL LAW, §§ 1052, 1891, 1892.

§ 7. Certificate of inspection. The inspectors, if satisfied that such vessel is in all respects safe and conforms to the requirements of this article, shall make and subscribe duplicate certificates, setting forth the age of the vessel and date of inspection, the name of the vessel, the name of the owner, the master, the number of licensed officers and crew deemed necessary to manage the vessel with safety, the number of boats and life preservers required, and the number of passengers that she can safely carry, and if a steam vessel, the age of the boiler, and the pressure of steam she is authorized to carry. One of said certificates shall be kept posted in some conspicuous place on the vessel to be designated by the inspectors in the certificate, and the other copy shall be kept by the inspectors and by them recorded in a book to be kept for that purpose. If the inspectors refuse to grant a certificate of approval, they shall make a statement in writing, giving their reasons for such refusal, and deliver the same to the owner or master of the vessel.

This section was derived from the Navigation Law of 1897, § 7.

For United States regulations relating to certificate of inspection, see U. S. R. S. § 4421, Federal Statutes Annotated, title *Steam Vessels.*

Fees for inspections and licenses: see infra, § 34.

Employment by common carrier of person addicted to intoxication: see PENAL LAW, § 1913.

Cited.— This section was cited in Op. Atty.-Gen. (1915) 335. See infra, § 39-c, note.

§ 8. Number of passengers carried. No greater number of passengers shall be transported upon any licensed steam vessel

[1] Following sentence new.

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than the number allowed in the certificate of such vessel, under a penalty of ten dollars, to be paid by the master or owner[1] for each passenger carried[2] in excess of the allowed number, unless special permission is first obtained from the inspectors under such precautions as they deem expedient.

This section was derived from the Navigation Law of 1897, § 8. It was amended to read as above by L. 1913, ch. 735, § 1. The amendments are shown in the footnotes.

For United States regulations relating to number of passengers carried, see U. S. R. S. §§ 4464, 4465, Federal Statutes Annotated, title *Steam Vessels.*

Cited.—This section was cited in Op. Atty.-Gen. (1915) 335. See infra, § 39-c, note.

Overloading passenger vessel: see PENAL LAW, §§ 1052, 1890, 1500, subd. 2.

§ 9. Construction of steamboats. All steamboats, to which this article is applicable, shall be so constructed that the woodwork about the boilers, chimneys, fire-boxes, cook-houses, stove and steam-pipes, exposed to ignition, shall be so shielded by some incombustible material, that the air may circulate freely between such material and woodwork, or other ignitible substances, and before granting a certificate of inspection, the inspectors shall require that all other necessary provisions be made throughout such vessel, as they may judge expedient to guard against loss or damage by fire.

This section was derived from the Navigation Law of 1897, § 9.

For United States regulations relating to construction of steamboats, see U. S. R. S., § 4470, Federal Statutes Annotated, title *Steam Vessels.*

Construction of excursion vessels: see infra, § 35.

§ 10. Stairways and gangways. Every vessel engaged in carrying passengers, shall be provided with permanent stairways and other sufficient means convenient for passing from one deck to the other, with gangways large enough to allow persons freely to pass, which shall be open, fore and aft of the length of the vessel, and to and along the guards; and whoever obstructs such gangways by freight or otherwise shall forfeit fifty dollars to the people of the state for every such violation.

This section was derived from the Navigation Law of 1897, § 10.

For United States regulations relating to stairways and gangways, see U. S. R. S. § 4484, Federal Statutes Annotated, title *Steam Vessels.*

[1] Words "or owner" new.

[2] Word "carried" new.

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§ 11. Sailing rules. 1. Signals. One distinct blast of the whistle shall mean: "I direct my course to starboard" (to the right); except when two vessels are approaching each other at right angles or obliquely, when it shall signify the intention of the vessel which is to starboard of the other to hold course and speed.

Two distinct blasts of the whistle shall mean: "I direct my course to port" (to the left).

Three distinct blasts of the whistle shall mean: "My engines are going at full speed astern" (backing up full speed).

Four distinct blasts of the whistle shall mean: "I am in distress and need your assistance."

Five or more distinct blasts of the whistle shall constitute the "danger signal."

It shall be forbidden to use what has become technically known among pilots as "cross signals;" this is, answering one whistle with two, or two whistles with one.

2. Positions. Rule 1. When steam vessels are approaching each other "head and head, that is, end on or nearly so," it shall be the duty of each to pass on the port side of the other (to the right), and either vessel shall give, as a signal of her intention, one distinct blast of her whistle, which the other vessel shall answer promptly with one similar blast of her whistle.

Rule 2. When steam vessels are approaching each other, and the courses of such vessels are so far to the starboard of each other as not to be considered to be meeting head on or nearly so, either vessel shall immediately give two distinct blasts of her whistle, which the other shall answer promptly with two similar blasts of her whistle, and they shall pass on the starboard side of each other (to the left).

Rule 3. When two vessels are approaching each other at "right angles or obliquely so as to involve risk of collision," the steam vessel which has the other on her own port side shall hold her course and speed, and shall so signify with one distinct blast of her whistle; and the vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard (to the right), so as to cross the stern of the other vessel, or, if necessary to do so, shall slacken her speed, or stop or reverse.

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Rule 4. When steam vessels are running in the same direction and the vessel astern shall desire to pass on the right or starboard side of the vessel ahead, she shall give one distinct blast of her whistle, as a signal of such desire, and, if the vessel ahead answers with one similar blast of her whistle, she shall pass to starboard (to the right); or if the vessel astern shall desire to pass to the left or port side of the vessel ahead, she shall give two distinct blasts of her whistle as a signal of such desire, and, if the vessel ahead answers with two similar blasts of her whistle, she shall pass to port (to the left); but if the vessel ahead does not think it safe for the vessel astern to pass at that point, she shall immediately signify the same by giving five or more rapid blasts of her whistle (the danger signal), and under no circumstances shall the vessel astern attempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when said vessel ahead shall signify her willingness by blowing the proper signal, which shall be answered by the vessel astern. Neither vessel shall in any case attempt to cross the bow or to crowd upon the course of the other vessel.

Rule 5. If, when steam vessels are approaching each other as per rules one and two, or crossing each other's courses as per rule three, or desire to pass each other as per rule four, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving five or more rapid blasts of her whistle (the danger signal), and both boats shall immediately slow their speed, or stop or reverse, as required to avoid collision, until proper signals have been given, answered and understood, or until the boats have passed each other.

Rule 6. When a steam vessel and a sailing vessel are proceeding in such direction as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel.

Rule 7. When a steam vessel is running in a fog or thick weather, it shall be the duty of the pilot to cause a long blast of the whistle to be sounded at intervals not exceeding one minute, and such vessel shall proceed at a moderate speed and with caution, having careful regard to the existing circumstances and conditions.

Rule 8. It shall be the duty of every master or pilot of any

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steam vessel to render such assistance as he can possibly give to any other vessel coming under his observation and being in distress on account of accident, collision or otherwise.

Rule 9. In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.

Rule 10. All steam vessels licensed under the provisions of this article shall conform to and obey such other rules and regulations as the inspectors may prescribe, not inconsistent herewith.

Rule 11. Every vessel propelled by machinery on the waters of this state shall have two copies of this section aboard, and, where possible, such copies shall be framed under glass, and placed in the pilot house or other conspicuous place for the government of the pilot.

The rules of this section shall apply to all boats propelled by machinery, public and private, navigating the waters of this state.

Former section 11, which was derived from the Navigation Law of 1897, § 11, amended by L. 1903, ch. 420, § 1, and which related to "Sailing rules," was repealed by L. 1913, ch. 765, § 2, and by section 3 of the same statute the section given in the text was substituted in lieu of the repealed section.

For United States regulations applicable to the great lakes and their connecting and tributary waters, see Act of Feb. 8, 1895, ch. 64, 28 Stat. L. 645, 2 Federal Statutes Annotated (2nd ed.) 402.

For United States regulations applicable to rivers, harbors and inland waters, see Act of June 7, 1897, ch. 4, 30 Stat. L. 96, 2 Federal Statutes Annotated (2nd ed.) 415.

Speed and meeting of boats on canals: see CANAL LAW, § 179.

Penalty for violation of sailing rules: see PENAL LAW, § 1500, subd. 3.

Relative duties of steamers and small craft propelled by oars on rivers and in narrow channels: see 5 L. R. A. (N. S.) 375. *Duty of vessel to avoid injury to other vessels by displacement waves:* see 12 Ann. Cas. 613 note; 7 L. R. A. (N. S.) 920 note. *Failure to hear fog signal as evidence of negligence:* see 13 Ann. Cas. 449 note; 18 Ann. Cas. 528 note.

Passing boats.— Good judgment and careful handling are often necessary to avert disaster. In selecting the mode of keeping out of the way, the speed of both vessels is as necessary to be taken into account as their courses. This is the every day practice of seamen. Safe navigation, especially in crowded harbors, would otherwise be impossible. As the vessel bound to keep out of the way must, at her peril, shape her course with reference to the speed as well as the heading of the other, the latter after an agreement between them is had, or after the other's maneuvers are known, has no right to change within her direction or speed to the other's prejudice, while she is executing proper and sufficient maneuvers to keep out of the way, unless some circumstances exist that make such a change necessary. The Britannia, (1888) 34 Fed. 546.

It would seem that the provisions of the Canal Law requiring boats to turn to the right was modified by the enactment of this section which applies to boats navigating canals. Wagner v. Buffalo, etc., Transit Co., (1901) 59

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App. Div. 419, 69 N. Y. S. 113, affirmed (1902) 172 N. Y. 634, 65 N. E. 1123.

Effect of signals.— In passing boats the first to give the signal mentioned in rule 2 makes it the imperative duty of those in charge of the other boat to change the course of that boat to the left, unless existing circumstances at the time were such as to fairly warrant the officer in command of the first to regard a departure from the rule necessary in order to avoid immediate danger. Wagner v. Buffalo, etc., Transit Co., (1901) 59 App. Div. 419, 69 N. Y. S. 113, affirmed (1902) 172 N. Y. 634, 65 N. E. 1123.

Passing vessels at anchor.— Where a tug boat on a clear night in the middle of a river could see a fishing boat well lighted and distinctly visible at a considerable distance, it was the duty of the tugboat to keep away from the fishing boat, which was lying almost motionless in the water. Polhamus v. Cornell Steamboat Co., (1900) 32 Misc. 695, 67 N. Y. S. 577, affirmed 61 App. Div. 616, 70 N. Y. S. 1147, affirmed (1904) 178 N. Y. 579 mem.

Row boats as subject to Navigation Law.—A boat ordinarily used as a rowboat but equipped temporarily with an electrical device by which it is propelled is certainly, at least while propelled by said device, a vessel propelled by machinery. This fact alone, however, does not make such a boat subject to the provisions of the Navigation Law. It would seem that a rowboat equipped temporarily with an electrical device by which it is propelled, and rented to a person who himself operates the boat, is not, during the term of such renting, a boat carrying passengers for hire. Op. Atty.-Gen. (1903) 411, 412.

§ 12. Lights on vessels. The master of every steamboat or vessel propelled by machinery, when navigating, shall have on board his vessel at all times and shall display[1] between sunset and sunrise,[2] the following lights:

1. At the bow a bright white light, of such character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side.

2. On the starboard or right side a green light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and to be so constructed as to show a uniform and unbroken light over an arc of the horizen of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

3. On the port or left side a red light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points

1 Words "shall have on board his vessel at all times and shall display," new.

2 Words "shall cause the same to carry" omitted.

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of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The green and red lights shall be fitted with inboard screens, projecting at least three feet forward from the lights, so as to prevent the lights from being seen across the bow.

4. The master of every vessel anchored in the night time shall cause a good and sufficient light to be shown at least ten feet above her deck. In case of small vessels, the inspectors may make special rules for lights different from the foregoing.

5. All row-boats and canoes, whether under oars or sail, shall carry a lantern, showing a white light, which, upon the approach of a vessel propelled by machinery, shall be temporarily exhibited in and for a sufficient time to prevent a collision. Sailing vessels when under way, shall display the same starboard and port lights as prescribed in this section for steam vessels.

Former section 12, which was derived from the Navigation Law of 1897, § 2, and which related to "Lights on Vessels," was repealed by L. 1913, ch. 765, § 2, and by section 3 a new section 12 was enacted in lieu of the repealed section. That section was amended to read as above by L. 1914, ch. 148. The amendments are shown in the footnotes.

For United States regulations applicable to the great lakes and connecting waters, and to rivers, harbors and inland waters see note to section 11, supra.

Penalty for violation of section: see PENAL LAW, § 1500, subd. 4.

Altering signal or light for vessel: see PENAL LAW, § 1422.

Duty of vessel anchored or moored in fairway or harbor to display signal light: see 16 Ann. Cas. 550 note.

§ 13. Steam fire pump. Every steam vessel permitted by her certificate to carry one hundred passengers or upwards, shall be provided with a good double-acting steam fire pump or other equivalent apparatus for throwing water, the same to be at all times during the navigation of such vessel, kept ready for immediate use, having hose of suitable size and of sufficient strength to stand a pressure of at least seventy-five pounds to the square inch, and of a length to be specified by the inspectors.

This section was derived from the Navigation Law of 1897, § 13, as amended by L. 1903, ch. 420, § 1.

For United States regulations applicable, see U. S. R. S. § 4471, Federal Statutes Annotated, title *Steam Vessels.*

Penalty for violation of section: see PENAL LAW, § 1500, subd. 6.

§ 14. Life boats. Every ferry boat propelled by machinery shall be provided with at least one substantial boat, fifteen feet or more in length, and properly supplied with oars, and kept

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tight and in good condition at all times, and so attached to such ferry boat that it may in case of need be launched into the water for immediate use. Every steamboat or vessel propelled by machinery and carrying passengers shall be provided, if of the measurement of two hundred and fifty and less than five hundred tons burden, with at least two substantial row boats, with life lines attached and properly supplied with oars, and kept tight and in good condition at all times, and so attached as to be capable of being launched into the water for immediate use in case of need; and if of the measurement of five hundred tons or more, with at least one first class life boat and one row boat twenty-five feet long by seven wide, capable of carrying or supporting fifty persons each, and at least one row boat of the usual size and construction, all to be properly supplied with oars, and kept tight and in good condition at all times, and so attached as to be capable of being launched into the water for immediate use in case of need. Every such vessel may also be required to carry such other boats, as the inspectors, on account of the route, or the number of passengers, deem requisite, and the master of such vessel shall exercise and discipline his crew in the launching, use and management of the boats until they become skilled boatmen.

This section was derived from the Navigation Law of 1897, § 14, as amended by L. 1903, ch. 420, § 1.

For United States regulations applicable, see U. S. R. S. § 4481, Federal Statutes Annotated, title *Steam Vessels*.

Penalty for violation of section: see PENAL LAW, § 1500, subd. 5.

§ 15. Life preservers; axes; buckets. Every steam vessel or vessel propelled by machinery used in the transportation of passengers for hire, and every excursion barge or vessel towed, or partly towed and partly propelled by machinery, used in the transportation of passengers for hire, shall have a life preserver or life float for each passenger she is allowed to carry and for each member of her crew. At least one-half thereof shall be life preservers, made of good sound cork blocks, adjustable to the body of a person, with belts and shoulder straps properly attached, and so constructed as to place the cork underneath the shoulders and around the body of the person wearing it; each such life preserver to contain at least six pounds of good cork having a buoyancy of at least four pounds to each pound of cork; and the other half or part thereof may be life floats, to be constructed of dry pine

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plank, four feet long, two inches thick and twelve inches wide, with lines properly attached in such manner as to be convenient for use. It shall be the duty of the inspectors to satisfactorily ascertain that every life preserver and such life floats are as herein required. Such life preservers and life floats shall be kept in convenient, accessible places in such vessel in readiness for immediate use in case of accident, and the places where the same are to be kept shall be designated in the inspectors' certificate, and also pointed out by printed notices posted in such places as the inspectors direct. Every such vessel shall carry in convenient places, at least ten buckets filled with water, with dip lines attached, and three axes in good condition; but the inspectors may, if they deem it necessary or proper, require a larger, or in case of very small vessels, permit a smaller number of buckets and axes.

This section was derived from the Navigation Law of 1897, § 15, as amended by L. 1905, ch. 74, § 1.

For United States regulations applicable, see U. S. R. S. §§ 4482, 4483, 4488, and Act July 9, 1886, ch. 755, § 2, Federal Statutes Annotated, title *Steam Vessels.*

Penalty for violation of section: see PENAL LAW, § 1500, subd. 5.

Injury to life-saving apparatus: see PENAL LAW, § 1911.

§ 16. Interference with safety valve. Whoever intentionally loads or obstructs, or causes to be loaded or obstructed, in any way, the safety valve of the boiler, or employs any other means or device whereby the boiler may be subjected to a greater pressure than the pressure allowed by the inspectors' certificate, or intentionally deranges or hinders the operation of any machinery or device employed to denote the stage of the water or steam in any boiler, or to give warning of approaching danger, or intentionally permits the water to fall below the prescribed low water limit of the boiler, shall forfeit to the people of the state the sum of five hundred dollars for each violation.

This section was derived from the Navigation Law of 1897, § 16, as amended by L. 1903, ch. 420, § 1.

For United States regulations applicable, see U. S. R. S. § 4437, Federal Statutes Annotated, title *Steam Vessels.*

Penalty for violation of section: see PENAL LAW, § 1500, subd. 7.

§ 17. Licenses. Every person employed as master, pilot or engineer on board of a steam vessel or a vessel propelled by ma-

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chinery, carrying passengers or freight[1] for hire, or towing for hire, shall be examined by the inspectors as to his qualifications, and if satisfied therewith they shall grant him a license for the term of one year for such boat, boats or class of boats as said inspectors may specify in such license. In a proper case, the license may permit and specify that the master may act as pilot, and in case of small vessels also as engineer and pilot. The license shall be framed under glass, and posted in some conspicuous place on the vessel on which he may act. Whoever acts as master, pilot or engineer, without having first received such license, or upon a boat or class of boats not specified in his license, shall be liable to a penalty of fifty dollars for each day that he so acts, except as in this article otherwise specified, and such license may be revoked by the inspectors for intemperance, incompetency or willful violation of duty. [2]An applicant for license as master, pilot or engineer, to act as such on steam vessels, must be a citizen of the United States, and at least twenty-one years of age, and to act as such on motor boats he shall be not less than eighteen years old.

This section was derived from the Navigation Law of 1897, § 17. It was amended to read as above by L. 1913, ch. 765. The amendments are shown in the footnotes.

For United States regulations applicable, see U. S. R. S. §§ 4439, 4441–4446, 4449, Federal Statutes Annotated, title *Officers of Merchant Vessels.*

Printing of the license by the state printer: see supra, § 3 note.

Penalty for violation of section: see PENAL LAW, § 1500, subd. 8.

Unlicensed piloting: see PENAL LAW, § 1501.

Relative rights and duties of pilot and master of vessel: see 10 Ann. Cas. 382 note. *Liability of pilot for negligence:* see 13 Ann. Cas. 949 note. *Liability of pilot to owner for damage covered by negligence:* see 14 L. R. A. (N. S.) 1114 note. *Liability of pilot association for negligence of pilot:* see 13 Ann. Cas. 950 note.

Cited.—This section was cited in Op. Atty.-Gen. (1915) 335. See infra, § 39-c, note.

§ 18. Lamps. No licensed vessel carrying passengers for hire shall be allowed to use in lamps, lanterns or other lights on such vessel, any oil which will not stand a fire test of at least three hundred degrees Fahrenheit.

This section was derived from the Navigation Law of 1897, § 18.

Penalty for violation of section: see PENAL LAW, § 1500, subd. 9.

§ 19. Names of vessels. Every vessel subject to the provisions of this chapter, shall have her name and the port to which she

[1] Words " or freight " new.

[2] Following sentence new.

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belongs painted on her stern on a black background in white, yellow or gilt letters, of not less than three inches in length. If any vessel, which is subject to the provisions of this chapter, shall be found without having her name and the name of the port to which she belongs so painted, the owner or owners shall be liable to a penalty of fifty dollars to the people of the state.[1] In case of small vessels the inspectors may make rules different from the foregoing. The name of a vessel shall not be changed without the consent of the inspectors. Any person violating this provision shall be liable to a penalty of not to exceed[2] fifty dollars to the people of this state.

This section was derived from the Navigation Law of 1897, § 19, as amended by L. 1903, ch. 420, § 1. It was amended to read as above by L. 1913, ch. 765, § 4. The amendments are shown in the footnotes.

For United States regulations applicable, see U. S. R. S. §§ 4178, 4334, Federal Statutes Annotated, title *Shipping and Navigation;* U. S. R. S. § 4495, Federal Statutes Annotated, title *Steam Vessels.*

§ 20. Method of landing passengers. Small boats containing passengers may be landed from or drawn to a steamboat by means of a line hauled in by hand, but in no case shall the line be attached to or hauled in by the machinery of any vessel. No passenger shall be put or suffered to go into any such small boat for the purpose of being landed until such small boat shall be completely afloat and wholly disengaged from the vessel, except held by a painter. A good and sufficient pair of oars suitable for the purpose shall be kept in such small boat. In landing or receiving any passenger in the night time, there shall be a signal from the small boat at the shore by means of a horn or trumpet, to enable those having charge on board the vessel to determine when the small boat, having landed or received her passengers, is ready to leave the shore.

This section was derived from the Navigation Law of 1897, § 20.
Penalty for violation of section: see PENAL LAW, § 1500, subd. 1.

§ 21. Engine stopped. While landing or receiving passengers the engine of the vessel shall not be put in motion except:

1. To give sufficient force to carry the small boat to the shore, or

[1] Following sentence formerly read: "The inspectors may, however, in the case of small vessels, permit such name to be placed elsewhere and in letters of less length.

[2] Words "not to exceed," new.

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2. To keep the vessel in proper direction and to prevent her from drifting or being driven on shore; but in no case shall it be put in motion while passengers are being transferred from such vessel into a small boat for the purpose of being landed.

This section was derived from the Navigation Law of 1897, § 21.
Penalty for violation of section: see PENAL LAW, § 1500, subd. 12.

§ 22. Certain inflammable or explosive articles not to be carried. No loose hay, loose cotton or loose hemp, camphene, nitroglycerine, naphtha, benzine, benzole, coal oil, crude petroleum, or other like explosive burning fluids or dangerous articles, shall be carried as freight or used in stoves on any steamer licensed to carry passengers under this chapter; except that refined petroleum which will not ignite at a temperature of less than one hundred and ten degrees Fahrenheit may be carried on the main deck of any vessel, provided the barrels or cases containing such oil are fully covered with a tarpaulin. But nothing in this section provided shall be construed to prevent any vessel of twenty tons burden or under which uses refined petroleum for fuel from carrying sufficient refined petroleum, which will not ignite at a temperature of less than one hundred and ten degrees Fahrenheit, with which to replenish the fires and properly equip such vessel for use; said petroleum to be carried in metal cans or tanks which shall be properly protected by a covering of wood or other substance which would equally protect from accident and be approved by said inspectors, and to be conveyed from said cans or tanks to the said fires through metal pipes.

This section was derived from the Navigation Law of 1897, § 22.
For United States regulations relating to the subject of this section, see U. S. R. S., § 4472, Federal Statutes Annotated, title *Steam Vessels.*
Penalty for violation of section: see PENAL LAW, § 1500, subd. 12.
Damaging vessel by explosion: see PENAL LAW, § 1420.
Gasoline in automobiles.—The prohibition of this section extends to the carrying of naphtha and similar substances as freight on boats. Certainly the transportation of an automobile using gasoline, etc., on a boat, not as freight, would constitute no violation of the section. Neither would the transportation of an automobile as freight, but without gasoline or similar fluids in its tank, constitute a violation; and it would not seem from a sensible and reasonable standpoint, that the section would be deemed applicable to the transportation of an automobile as freight, containing gasoline or similar fluid in its tank, placed there presumably for use in connection with its operation. In that instance, the freight actually carried, on which the owner would be required to pay charges, would be the automobile itself. The contents, for the purpose of its operation, would seem to be purely incidental. Op. Atty.-Gen. (1901) 307, 308.

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§ 23. Racing. No master, engineer or other person having charge of the boiler or apparatus for the generation of steam of any steamboat shall create, or allow to be created, an undue or unsafe quantity of steam in order to increase the speed of such steamboat or to excel another boat in speed. Any person violating the provisions of this section shall forfeit to the people of the state the sum of five hundred dollars for every such violation.

This section was derived from the Navigation Law of 1897, § 23.
Penalty for violation of section: see PENAL LAW, § 1500, subd. 12.

§ 24. Inability to provide licensed officers. If any vessel is deprived of the services of any licensed officer without the consent, fault or collusion of the master, owner or any person interested in the vessel, the inspectors shall be notified and the deficiency may be temporarily supplied until the services of a licensed officer can be obtained.

This section was derived from the Navigation Law of 1897, § 24, as amended by L. 1903, ch. 420, § 2.

§ 25. Liability of owner. The owner of every steamboat or vessel shall be responsible for the good conduct of the master employed by him, and if any penalty incurred by such master is not paid by him and can not be collected from him by due course of law, it may be recovered of the owner or owners, jointly or severally, of the steamboat or vessel in whose employ he was at the time of the incurring of such penalty, in the same manner as if such owner or owners were sureties of such master.

This section was derived from the Navigation Law of 1897, § 25.
For United States regulations relating to the subject of this section, see U. S. R. S., § 4493, Federal Statutes Annotated, title *Steam Vessels.*
Penalties generally: see infra, § 33.
Duty of masters to suppress gambling on board their vessels: see PENAL LAW, § 981.
Employment by common carrier of person addicted to intoxication: see PENAL LAW, § 1913.

§ 26. Copy posted. The master of every licensed vessel shall keep a copy of the preceding sections of this article posted in a conspicuous place on such vessel for the inspection of all persons on board thereof. Every master violating the provisions of this section shall forfeit to the people of the state twenty-five dollars, and the additional sum of twenty-five dollars for each month while

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such violation continues. [1]If such copy cannot be posted, it shall be carried as ordered by the inspectors.

This section was derived from the Navigation Law of 1897, § 26. It was amended to read as above by L. 1913, ch. 765, § 4. The amendment is shown in the footnote.

For United States regulations relating to posting of U. S. statute, see U. S. R. S., § 4494, Federal Statutes Annotated, title *Steam Vessels.*

§ 27. Annual report. The inspectors shall on or before the first day of January in each year, make a verified report to the superintendent of public works, containing a detailed statement of the names and number of vessels examined and licensed, the names and number of vessels to which licenses were refused and stating the reasons for refusal, the names and number of persons examined and licensed, the names of and the number of persons to whom licenses were refused and stating the reasons therefor, and may include in such report any other information the inspectors deem desirable.

This section was derived from the Navigation Law of 1897, § 27.

§ 28. Persons employing steamboats to receive no compensation. No person employing steamboats for towing shall receive any commission or compensation for any orders given to the owners, captain or agent of such steamboat for such towage and no person shall interfere with or hinder such owner, captain or agent while in the prosecution of his business. The provisions of this section shall not apply to the towage of canal boats, or to the waters of Lake Champlain, or repeal, amend or affect any existing law or regulations in regard to pilotage or quarantine in the port of New York. Any person violating the provisions of this section shall forfeit to the people of the state the sum of fifty dollars for the first offense, and fifty dollars for the second offense, and thereafter for each and every offense the sum of not less than one hundred dollars.

This section was derived from the Navigation Law of 1897, § 28.

§ 29. Duties of manufacturers of marine boilers. Any person, firm or corporation constructing a boiler to be used upon a vessel coming under the provisions of this chapter, shall cause the

[1] Following sentence new.

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material of which such boilers are made to be subjected to such physical and chemical tests as may be specified by the inspectors, and shall submit a report of such tests to the inspectors. The manufacturers shall also submit to the inspectors complete drawings and descriptions of said boilers, giving all the data necessary for the computation of the pressure that it is safe for the boiler to carry.

This section was derived from the Navigation Law of 1897, § 29, as amended by L. 1903, ch. 420, § 3.

§ 30. Accidents. Whenever a vessel meets with an accident involving a loss of life or damage to property, it shall be the duty of the licensed officers of such vessel to report the same in writing and in person, without delay, to the superintendent of public works. Provided that when from distance it may be inconvenient to report in person a report may be made in writing only and sworn to before an authorized magistrate.

This section was derived from the Navigation Law of 1897, § 30, as added by L. 1903, ch. 420, § 4.

§ 31. Repairs. Whenever any vessel coming under the provisions of this chapter is placed upon the dock for repairs it shall be the duty of the owner to report the fact to the inspectors, so that a thorough inspection may by them be made to determine what is necessary to make such vessel seaworthy, if the condition or age of the steamer, in the judgment of the inspectors renders such examination necessary. Before making general repairs to a boiler of a steam vessel coming under the provisions of this chapter, the engineer in charge of such steamer shall report in writing the nature of such repairs to the inspectors. It shall be the duty of all engineers when an accident occurs to a boiler in their charge tending to render such boiler unsafe, to report the same to the inspectors.

This section was derived from the Navigation Law of 1897, § 31, as added by L. 1903, ch. 420, § 4.
Inspection and test of boilers: see supra, § 6.

§ 32. Vessel owners to notify inspectors. It shall be the duty of every owner of a vessel propelled by machinery and navigating the waters within the jurisdiction of this state, where it is the intention to use such vessel for carrying passengers or freight for

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hire, or to tow for hire, to notify the inspectors provided for in this article of such intention, at least one month before it is desired to so use such vessel, and to request an inspection of such vessel. It shall also be the duty of the owner of a vessel having a certificate of inspection from the inspectors provided for in this article, to notify said inspectors of the expiration of such certificate at least twenty days before said certificate shall expire. [1]A temporary permit to operate such vessel, pending inspection, may be issued by the inspectors, if they find through documentary evidence that such vessel is properly equipped and manned for the safety of life and property.

This section was derived from the Navigation Law of 1897, § 32, as added by L. 1903, ch. 420, § 4. It was amended to read as above by L. 1913, ch. 765, § 4. The amendment is shown in the footnote.

§ 33. Penalties. All vessels propelled by machinery, carrying passengers or freight for hire, or towing for hire, must comply with all the terms and provisions of the preceding sections, and with all orders, regulations and requirements of the inspectors. [1]And all other vessels propelled by machinery must comply with all of the terms and provisions of the preceding section which apply to them, and all other orders, regulations and requirements of the state inspectors. If any such vessel is navigated without complying with the terms and provisions of this article, or without the requisite certificates of the inspectors, the owners and master shall forfeit to the people of the state the penalties prescribed in this article, and the vessel so navigated shall also be liable therefor.[2] Every owner or[3] master of a steamboat or vessel who shall violate any of the provisions of this article, shall for every such violation forfeit to the people of the state the sum of not more than one hundred dollars,[4] unless a different penalty is prescribed herein. The inspectors shall investigate all violations of the provisions of this article, and for such purpose shall have power[5] to subpoena witnesses and compel their attendance; and they may also administer all necessary oaths to any witnesses thus

1 Following sentence new.

2 Words "and may be attached and proceeded against in any court having jurisdiction," omitted.

3 Words "owner or" new.

4 Words "not more than one hundred dollars," substituted for words "two hundred and fifty dollars."

5 Words "and are hereby authorized," omitted.

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summoned. [1]The inspectors shall have power and are hereby authorized to impose and collect such fines as are provided by law, and, if necessary, seize upon, attach and hold such boats, at the expense and risk of the owner, until such fines are paid, subject to appeal of the superintendent of public works. The inspectors may, if the performance of their duties so requires, turn such boat over to the sheriff of the county in which such violation occurred, who shall keep such boat in custody until such fines as may have been imposed, together with the expenses incurred for the keeping in custody of such boat, have been paid, and order for release of such boat has been issued by the inspectors. All such fines imposed and collected by the inspectors for violations of any of the provisions of the navigation law shall by them be turned over to the superintendent of public works within thirty days after collection of such fines, together with a report of the nature of such violation and the circumstances connected therewith. All authority to mitigate or remit such fines imposed and collected shall be vested solely in the superintendent of public works.

This section was derived from the Navigation Law of 1897, § 33, as added by L. 1903, ch. 420, § 4. It was amended to read as above by L. 1913, ch. 765, § 4. The amendments are shown in the footnotes.

Private action for violation of navigation laws: see L. R. A. 1915E 541 note; 9 L. R. A. (N. S.) 375 note.

§ 34. Fees for inspections and licenses. The owner of a vessel inspected and certified as provided in this article, shall pay to the inspectors for each vessel under ten tons burden, five dollars; for each vessel over ten and under twenty tons burden, seven dollars and fifty cents; for each vessel over twenty and under fifty tons burden, ten dollars; for each vessel over fifty and under one hundred tons burden, twelve dollars and fifty cents; on all vessels over one hundred tons burden, twenty-five dollars. Each person licensed shall pay five dollars for each original license and three dollars for each renewal thereof. All moneys received by the inspectors for examinations, licenses or renewals of licenses, shall be by them turned over to the superintendent of public works within thirty days of the receipt thereof.

This section was derived from the Navigation Law of 1897, § 34, as added by L. 1905, ch. 359, § 1.

[1] Remainder of section new.

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§ 35. Construction of excursion vessels. All barges and steam vessels engaged in excursions upon routes within a radius of forty-five miles from cities having a population of one million inhabitants or over, which shall be constructed subsequent to the twenty-second day of April, nineteen hundred and five, shall be so constructed that the stanchions thereof and the deck beams and frames shall be of iron or steel. The navigation or use of a steam vessel or barge carrying passengers on excursions within this state, upon routes within a radius of forty-five miles from cities having a population of one million inhabitants or over, hereafter constructed in violation of this section, shall be deemed a misdemeanor, punishable by a fine of not more than one thousand dollars or by imprisonment not to exceed two years, or by both such fine and imprisonment; and it shall be the duty of the district attorney of the county in which such violation occurs to prosecute the owner and master of such steam vessel or barge. The term "master" used in this section includes every person having for the time the charge, control or direction of a vessel or barge. This section shall not apply to barges or steam vessels in process of construction on the twenty-second day of April, nineteen hundred and five; nor shall it be construed to repeal any law existing on the twenty-second day of April, nineteen hundred and five, applicable to any steam vessel or barge or to the construction thereof.

This section was derived from L. 1905, ch. 306, §§ 1–5.
Construction of steamboats: see supra, § 9.
Term "master" generally: see supra, § 2.

§ 36. Regulations for the conduct of regattas. The superintendent of public works shall adopt, and may, from time to time, amend, regulations conserving the safety of steamers, yachts, racing boats and other craft, and the passengers, oarsmen and other persons thereon, either observers of or participants in any regatta held on the waters of Chautauqua lake or any other waters within the jurisdiction of the state, excepting waters which are under the jurisdiction of the United States. A copy of such regulations and of any amendments thereto shall be filed in the office of the superintendent of public works and also in the office of the secretary of state. The superintendent of public works shall also furnish a printed copy of such rules and regulations to any person, firm, corporation or association making due application therefor.

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Whenever a regatta is proposed to be held on any such waters the person, committee, association or corporation in charge thereof shall, at least fifteen days prior thereto, cause written notice of the date of such regatta to be given to the superintendent of public works by mailing such notice to his office at Albany, and the superintendent of public works may detail steamboat inspectors appointed pursuant to this chapter, or any other persons designated by him, to attend such regatta and enforce the regulations adopted pursuant to this section. The expenses of such inspectors or other persons so detailed shall be borne by the person, committee, association or corporation conducting such regatta, and such inspectors or other persons shall not be so detailed until satisfactory guaranty has been made to the superintendent of public works that such expense will be paid. Any person who shall violate any regulation adopted pursuant to this section shall for every such violation forfeit to the people of the state the sum of two hundred and fifty dollars.

This section was derived from the Navigation Law of 1897, § 34-a, as added by L. 1907, ch. 197, § 1.

§ 37. [Motor boats, defined; classes.] That the words "motor boat" where used in this act shall include every *vessed propelled by machinery, other than by steam. Motor boats subject to the provisions of this act shall be divided into classes, as follows: Class 1: Those less than twenty-six feet in length; Class 2: Those twenty-six feet or over, and less than forty feet in length; Class 3: Those forty feet or over.

New. Added by L. 1913, ch. 765, § 5.

For United States regulations relating to motor boats as to classification, see Act of June 9, 1900, ch. 268, § 2, Federal Statutes Annotated, title *Collisions.*

Motor boats to be provided with mufflers: see PENAL LAW, § 1510. *Exhaust on gasoline motor boats on Lake George to be muffled:* see PENAL LAW, § 1500-a.

Statutory or municipal regulation of motor boats: see Ann. Cas. 1915C 1139 note.

§ 38. [Motor boats, lights to be carried.] Every motor boat in all weathers, from sunset to sunrise, shall carry the following lights, and during such time shall carry no other lights which may be mistaken for those prescribed:

* So in original.

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(a) Every motor boat of class one shall carry the following lights:

First. A white light aft to show all around the horizon.

Second. A two-color combination light in the forepart of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on the respective sides. The glass or lens of such lights shall not contain less than twelve square inches.

Third. Motor boats of class one may carry, in lieu of the above specified lights: A white light forward and aft and regulation lights (red and green) of not less than twelve square inches, properly screened.

(b) Every motor boat of classes two and three shall carry the following lights:

First. A bright white light in the forepart of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side. The glass or lens of such white light shall be of not less than the following dimensions on motor boats of

Class two: Nineteen square inches.

Class three: Thirty-one square inches.

Second. A white light aft to show all around the horizon.

Third. On the starboard side a green light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

On the port side a red light so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The glasses or lenses in said sidelights shall be of not less than the following dimensions on motor boats of

Class two: Sixteen square inches.

Class three: Twenty-five square inches.

All glasses or lenses prescribed by paragraph "b," subdivision of section thirty-eight shall be fresnel or fluted.

All regulation sidelights shall be fitted with inboard screens

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of sufficient height, and so set as to prevent these lights from being seen across the bow, and screens shall be of not less than the following dimensions on motor boats of

Class one and two: Eighteen inches long.

Class three: Twenty-four inches long.

New. Added by L. 1913, ch. 765, § 5.

For United States regulations relating to motor boats as to lights, see Act of June 9, 1910, ch. 268, § 3, Federal Statutes Annotated, title *Collisions*.

§ 39. [Motor boats, whistles to be carried.] Every motor boat under the provisions of this act shall be provided with a whistle or other sound-producing mechanical appliance capable of producing a blast of two seconds or more in duration, and of such strength as to be heard plainly for a distance of not less than one thousand feet in still weather.

New. Added by L. 1913, ch. 765, § 5.

For United States regulations in relation to sound signals, see Act of June 9, 1910, ch. 268, § 4, Federal States Annotated, title *Collisions*.

§ 39-a. [Motor boats, life preservers.] Every motor boat subject to any of the provisions of this act shall carry for every person aboard the boat, including members of the crew and children, either a life preserver, life belt or buoyant cushion which shall be of such types as approved by the United States board of supervising inspectors, and sufficient to sustain afloat for a continuous period of twenty-four hours an attached weight so arranged that whether said weight be submerged or not, there shall be a direct downward pull upon such life preserver, life belt or buoyant cushion of at least twenty pounds. On motor boats of over forty feet in length not more than one-half the number of such life preservers, life belts or buoyant cushions may be substituted by wooden floats, constructed of dry pine planks, four feet long, two inches thick and twelve inches wide, with lines properly attached so as to be convenient for use in case of accident.

All such life preservers, life belts, buoyant cushions or wooden floats shall be so placed as to be readily accessible at all times.

New. Added by L. 1913, ch. 765, § 5.

For United States regulations relating to life preservers, see Act of June 9, 1910, ch. 268, § 5, Federal Statutes Annotated, title *Collisions*.

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§ 39-b. [Motor boats, fire extinguishers; anchors.] Every motor boat subject to any of the provisions of this act shall carry ready for immediate use, the necessary number of fire extinguishers, and sufficient sand or salt to promptly and effectually extinguish burning gasoline. Every motor boat shall also carry an anchor and cable of sufficient weight and strength to hold the boat from drifting in any kind of weather.

The equipment as provided for in sections thirty-nine-a and thirty-nine-b may be omitted on boats actually engaged in a race, held under the direction of a duly incorporated yacht club or racing association.

New. Added by L. 1913, ch. 765, § 5.

For United States regulations relating to fire extinguishers, see Act of June 9, 1910, ch. 268, § 6, Federal Statutes Annotated, title *Collisions*.

§ 39-c. [Motor boats, inspection.] All motor boats carrying passengers or freight for hire or towing for hire, or who receive compensation of any kind or nature for such service, shall be subject to inspection as per section five, article two of the navigation law, and no such boat shall be operated or navigated except in charge of a person duly licensed for such service by the inspectors, as required by section seventeen, article two of the navigation law.

New. Added by L. 1913, ch. 765, § 5.

For United States regulations relating to inspection of motor boats, see Act of Jan. 18, 1897, ch. 61, Federal Statutes Annotated, title *Steam Vessels*.

Ferry propelled by motor boat.— This section does not apply to a ferry operated by a cable and a motor boat wholly outside of or separate from the ferry boat. Op. Atty.-Gen. (1915) 335.

§ 39-d. [Motor boats, penalties; powers of inspectors.] A fine not exceeding one hundred dollars may be imposed by the inspectors for any violation of this act, and such motor boat shall be liable for said penalty and may be seized upon, attached and held, at the expense and risk of the owner, until such fines shall have been paid, subject to appeal to the superintendent of public works.

The inspectors for such purpose shall have power and are hereby authorized to arrest any offender of the provisions of this act, to subpoena witnesses and compel their attendance, and to administer all necessary oaths to any witness thus summoned. The inspectors shall have power and are hereby authorized to

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impose and to collect such fines as provided by law, and, if necessary, seize upon, attach and hold such boats, at the expense and risk of the owners, until such fines imposed shall have been paid.

The inspectors may, if the performance of their duties so requires, turn such boats over to the sheriff of the county in which such violation occurred, who shall keep such boats in custody until such fines as may have been imposed, together with the expenses incurred for the keeping in custody of such boats, have been paid, and an order for release of such boats has been issued by the inspectors.

All such fines imposed and collected by the inspectors for any violations of this act shall be turned over by them to the superintendent of public works within thirty days after collection of such fines, together with a report of the nature of such violation and the circumstances connected therewith.

All authority to mitigate or remit such fines imposed and collected shall be vested solely in the superintendent of public works.

New. Added by L. 1913, ch. 765, § 5.

§ 39-e. [Special inspectors.] The superintendent of public works may, if in his judgment conditions so require, appoint members of local boat clubs or others as special inspectors, with power and authority to arrest and to bring before any court having jurisdiction, any offenders of the provisions of this article. Such special inspectors shall receive no compensation, except that they shall receive one-half of all fines secured upon convictions, on arrests made by any such special inspector.

New. Added by L. 1913, ch. 765, § 5.

§ 39-f. [Motor boats, copy of law and rules to be carried.] All motor boats shall carry at least one copy of this act, and one copy of the pilot rules, aboard the vessel, which copies will be furnished by the bureau of navigation on request.

New. Added by L. 1913, ch. 765, § 5.

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ARTICLE 3

Hudson River Navigation

Section 40. Obstructions.
40-a. Removal of ice gorges.
41. Steamboat not to tow mud scows.
42. Escape of sparks.
43. Rafts.
44. Wharfage.
45. Lights upon swing-bridges.
46. Marks on floating timber.
47. Harbor masters.

§ 40. Obstructions. No person shall make use of any net or weir, or set, drive or place any hedge, stake, stone, post, pole, anchor or other fixture in the Hudson river, out of the channel thereof, between the city of New York and the state dam at Fort Edward, other than such as are permitted by law to be used or placed to catch fish. No person shall by means of or from any steamboat, scow or vessel, or in any other manner whatever, cast, throw, dump or deposit into the Hudson river any food, or contrivance or device, used to keep, carry or preserve food; or any solid substance or material, except dirt accumulated from the use of the boat by human beings; or place, construct or build any contrivance, substance or thing whatever within such waters which shall or may tend to decrease the depth of such waters or interfere with, imperil or jeopardize the free and safe navigation thereof. This section shall not be construed to prevent the hauling of fire from the furnace-grate of a steamboat having state-rooms above the main deck, or dumping the ashes which may accumulate thereon during a trip except between the city of New York and Stony Point, and between Tivoli and the state dam above Troy; or depositing materials to build wharves or piers, or to fill land under water granted by the state to any person, if a permanent and substantial bulkhead be first properly and securely built, inclosing the whole area of any such pier or wharf; or the setting of shad poles in shad season or the use of any other device or contrivance for fishing in any season of the year authorized by law, except below the northerly line estab-

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lished by the harbor commissioners of the city of New York. Any person violating any of the provisions of this section shall forfeit to the people of the state the sum of fifty dollars for each violation.

This section was derived from the Navigation Law of 1897, § 35.
Section 40 of the Navigation Law of 1897 is now covered by section 45.
Using net or weir unlawfully in Hudson river: see PENAL LAW, § 1503.

§ 40-a. Removal of ice gorges. The superintendent of public works is hereby authorized and empowered, and it shall be his duty, to remove, open up, break or destroy, whenever it shall in his opinion be necessary for the prevention of or relief from floods upon and along the Hudson river, gorges, packs or blockades of ice in such river at any point south of the state dam at Troy. He may employ such labor, and such tugs, engines, machines or appliances as may be necessary for exercising the powers conferred on him by this section and shall pay the expense thereof from moneys that may be appropriated therefor; and he may detail to such work any inspectors or employees of the department of public works as he may deem advisable.

New. Added by L. 1910, ch. 312.

§ 41. Steamboats not to tow mud scows. No steamboat or tug shall tow a mud scow carrying mud, earth, soil, ashes, refuse, stone, rock or other solid substance or material which is to be dumped or deposited in the Hudson river in violation of the provisions of this article. The masters of such steamboat or tug and the contractor using the same shall jointly and severally, forfeit the sum of two hundred dollars to the people of the state for every violation of the provisions of this section.

This section was derived from the Navigation Law of 1897, § 36.

§ 42. Escape of sparks. The master, engineer and fireman of steamboats navigating the Hudson river shall cause the dampers in the pipes or chimneys thereof to be closed, or otherwise prevent the escape of sparks and coals from such chimneys or pipes while passing near the cities and villages along the Hudson river, or landing passengers or freight or lying at the docks or wharfs thereof. Such person or persons and the owner or owners of such steamboats shall be, jointly and severally, liable for all damages

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by fire occasioned by the violation of any provision of this section, and shall forfeit to the city or village adjacent to where such violation occurred the sum of one hundred dollars.

This section was derived from the Navigation Law of 1897, § 37.
Penalty for violation of section: see PENAL LAW, § 1500, subd. 11.

§ 43. Rafts. All rafts of timber or lumber floating on the Hudson river at night shall show two red lights, one on each end of such raft, at a height of not less than ten feet from the upper logs or plank. Every person violating any provision of this section shall forfeit to the people of the state the sum of fifty dollars for every such violation.

This section was derived from the Navigation Law of 1897, § 38.
For United States regulations relating to lights on rafts, see Act of June 7, 1897, ch. 4, § 1, art. 9, 2 Federal Statutes Annotated (2d ed.) 419.

§ 44. Wharfage. Wharfage or dockage may be charged to and received from every steamboat or vessel using or making fast to any wharf or pier along the Hudson river, except at the city of Yonkers, between the north shore of Harlem river and the southerly limits of the city of Albany, erected by virtue of any water grant from the state, at the following rates for every day or part of a day's use of the same: for every steamboat or vessel of two hundred tons burden or under, one-half cent per ton; for every steamboat or vessel of over two hundred tons, one cent for each additional ton not exceeding two hundred, and one-quarter of a cent for every additional ton over four hundred; for every steamboat or vessel making fast to another lying at any such wharf or pier, one-half of the above rates, except that all steamboats or vessels landing or receiving passengers or light freight at any such wharf or pier may be charged for each landing a sum not to exceed fifty cents. The wharfage provided by this section shall be a lien on the vessel liable therefor.

This section was derived from the Navigation Law of 1897, § 39.
Liens on vessels generally: see LIEN LAW, § 80 et seq.

Wharfage defined.—Wharfage is a charge against a vessel for lying at a wharf, and is not a charge for caring for the goods. Woodruff v. Havemeyer, (1887) 106 N. Y. 129, 12 N. E. 628.

Nature of use.—A dock may be private or public, though owned by an individual, and the use it has been put to at least furnishes the basis for an inference of the owner's intention in its construction and maintenance. Thousand Island Steamboat Co. v. Visger, (1904) 179 N. Y. 206, 71 N. E. 764, affirming 86 App. Div. 126, 83 N. Y. S. 325.

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General rights of owners.—A grant by the state of land under the water of a navigable river on which a dock has been erected appropriates the dock and wharf erected to the use of all who are engaged in promoting the purpose of the grant, which is the commerce of the state, subject, only, to the owners' right to collect a reasonable compensation for the use. Thousand Island Steamboat Co. v. Visger, (1904) 179 N. Y. 206, 71 N. E. 764, affirming 86 App. Div. 126, 83 N. Y. S. 325.

Right of city to collect wharfage.— It would seem that the city has the right to exact wharfage only in cases where it is the owner of the wharves for which the charge is made. Op. Atty.-Gen. (1903) 211, 219.

Service as basis for charges.— It would seem that fees cannot be collected from vessels unless services are rendered, and that a charge under the name of services not rendered would be regarded in reality as a charge for the privilege of entering and leaving port and hence unconstitutional. Op. Atty.-Gen. (1903) 211, 220.

Vessels engaged in interstate commerce.—The fact that the vessel comes from another state makes the business in which the vessel is engaged interstate commerce, and it is therefore under protection of that section of the Constitution of the United States which prohibits levying tonnage duties, but does not necessarily release that vessel from liability to all proper port charges. Op. Atty.-Gen. (1903) 211, 219, 220.

§ 45. Lights upon swing-bridges. Every corporation, company or individual, owning, maintaining or operating a swing-bridge across the Hudson river shall, during the season of navigation, between sundown and sunrise keep and maintain the following lights: Upon every swing-bridge with water on each side of pivot pier, eight lights, located as follows: One red light on or over the north and one on or over the south end of the east rest piers; one red light on or over the north and one on or over the south end of the west rest pier, and a green light on each corner of the bridge when open. If there is a waterway on only one side of the pivot pier, five lights, located as follows: One red light on or over the north and one on or over the south end of the rest pier nearest the channel, and a green light upon each end of the bridge when open upon the corners nearest the channel. Such lights shall be of the usual brilliancy of lights used for such purposes and known as signal lanterns.

This section was derived from the Navigation Law of 1897, § 40.
Lights on swing bridges across Hudson river: see PENAL LAW, § 1504.

§ 46. Marks on floating timber. Every person who shall put any logs or timber into the waters of the Hudson river, or of its branches, to the northwest of Baker's falls, for rafting or floating down said river, or its branches, shall select some mark, different from any mark previously recorded, and shall put the same in a

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conspicuous place, upon each log, or stick of timber, so put into said river, or its branches, and shall cause his mark to be recorded by the town clerk of the town of Queensbury, whose duty it shall be to enter the same in a book, to be kept by him for that purpose, which shall be subject to the inspection of any person requiring it.

This section was derived from R. S. pt. 1, ch. 20, tit. 15, § 2.
Marks on logs and timber to be recorded: see infra, § 73.
Floating logs or defacing marks thereon: see PENAL LAW, § 1360.

§ 47. Harbor masters. The governor may, in his discretion, appoint a harbor master for the waters of the Hudson river adjacent to any city or village located on such river north of the city of New York. Such harbor master shall receive no compensation for his services. He shall as to waters over which he has jurisdiction regulate and station steamboats and other vessels, and may determine how far and in what instances masters or other persons having charge of steamboats or vessels shall accommodate each other in their respective anchorages. If any master or other person having control of any steamboat or vessel within the limits of such waters shall neglect or refuse to obey the directions of such harbor master in any matters within his authority, or shall resist or oppose him in the execution of his duties, he shall be liable to a penalty of fifty dollars, recoverable by such harbor master in any court of competent jurisdiction, and applicable to the general fund of the city or village for which such harbor master shall be appointed.

New. Added by L. 1911, ch. 620.

Constitutionality.—Chapter 592 of the Laws of 1897, which provided that the master, owner or consignee of every steamboat or vessel entering the port of Albany or loading or unloading or making fast to any wharf therein, should, within forty-eight hours after the arrival thereof, pay to the harbor master for his services the sum of one and one-half cents per ton per annum, which should be computed from the registered tonnage of such steamboat or vessel, which law was a re-enactment of a prior law apparently first passed in 1837 (Laws N. Y. 1837, P. 388, C. 356) and again in 1866 (Laws N. Y. 1866, P. 836, C. 374), was held unconstitutional and in violation of article 1, section 10 of the Federal Constitution as imposing a tonnage tax. Way v. New Jersey Steamboat Co., (1904) 133 Fed. 188. A similar Act relating to the port of New York was enacted in 1862, amended in 1865, and held unconstitutional in Inman Steamboat Co. v. Tinker, (1876) 94 U. S. 238, 24 U. S. (L. ed.) 118, on the ground that it violated article 1, section 10 of the Federal Constitution in that it imposed a duty on tonnage. This case was followed in Way v. New Jersey Steamboat Co., supra.

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ARTICLE 4

Other Waters of the State

Section 50. Buoys.
50-a. Location of buoys or beacons to mark obstructions to navigation.
51. Removal of gravel prohibited.
52. Deposit of dead animals and rafting in Lake George, prohibited.
53. Deposit of dead animals and debris in the Saint Lawrence river, prohibited.
54. Prevention of ice gorges in Saint Lawrence river.
55. Deposits in Racket river, Oswegatchie river and east branch of the Saint Regis river, prohibited.
56. Pilotage fees, port of New York.

§ 50. Buoys. No person shall moor or fasten a vessel, scow or raft to any buoy placed by the United States in the Niagara river; and if such buoy shall be removed or destroyed by any person by accident or otherwise, such person shall immediately notify the collector of the port next entered thereafter of such removal or destruction. Every person violating any provision of this section shall forfeit to the collector of the port of Buffalo, the sum of one hundred dollars for every such violation, to be used by such collector in maintaining and restoring such buoys.

This section was derived from the Navigation Law of 1897, § 50.
Injuring pier, dock or buoy: see Penal Law, § 1423.

§ 50-a. Location of buoys or beacons to mark obstructions to navigation. The superintendent of public works may authorize the placing of buoys or beacons to mark obstructions to navigation in the waters of this state, exclusive of those under federal jurisdiction, which any person, corporation, association or organization interested in the navigation of such waters may desire to place therein without expense to the state; and any buoy or beacon placed in such waters pursuant to such authority shall be deemed lawfully placed.

New. Added by L. 1910, ch. 421.

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§ 51. Removal of gravel prohibited. No person shall take or carry away by means of a vessel or otherwise, any gravel, sand or stones from the beach or shore of Long Island sound between Old Field Point and Mount Misery Point, in the town of Brookhaven, Suffolk county; or from the beaches or shores separating such sound from Setauket or port Jefferson harbors in such town or from the outer bar or other bars or flats adjoining the channel or entrance to Smithtown harbor in such sound; or land or go upon any such beach, shore, bar or flat with intent to remove, take or carry away or assist in removing, taking or carrying away any such gravel, sand or stones, or have on board his boat or vessel or on any boat or vessel in his possession any such gravel, sand or stones, taken therefrom with intent to carry the same away. Every person violating any provision of this section shall forfeit to the town where the violation occurred the sum of two hundred dollars for every such violation.

This section was derived from the Navigation Law of 1897, § 51.

§ 52. Deposit of dead animals and rafting in Lake George probibited. No person or persons shall drain, deposit or cast any dead animal, carrion, offal, excrement, garbage or other putrid or offensive matter into the waters of Lake George or Schroon lake in this state; nor moor nor store logs or rafts in any bay of or inlet to such lakes. This section shall not be construed to prevent the deposit of the usual waste or drainage from factories, or the storage of logs or rafts by adjacent owners in front of their own uplands, or the rafting or floating of logs through Schroon lake in the usual manner, or the erection of booms prior to the twentieth day of June in each year to secure and prevent the separation of logs in such lake for such time as is required to float them through the outlet in such manner as not to interfere with its navigation by any party employing steamboats to carry freight or passengers. Logs or timber or lumber of any kind shall not be moored or stored or rafted or floated through the waters of Lake George at any time from the first day of July until the first day of October of any year. All rafts of logs or timber or lumber and all logs or timber or lumber rafted or intended to be rafted or floated through the waters of Lake George during the remainder of any year[1] shall be so secured and fastened together that the

[1] Words "during the remainder of any year," new.

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same shall not separate, and each such log or piece of lumber or timber shall be clearly marked to identify the owner.[1] Every person violating any provision of this section shall be guilty of a misdemeanor punishable by a fine of one hundred dollars, or by imprisonment in a penitentiary or county jail for not more than two months, or by both, in the discretion of the court for each offense, and the district attorney of the county in which the offense is committed or exists, is authorized and directed to prosecute the offender or offenders hereunder and directed to pay the fine or fines collected to the treasurer of the county in which the offense is committed or exists to be applied in reduction of the annual county taxes.[2] The owner of any log or logs or timber or lumber at large in the waters of Lake George, shall also be liable to a penalty of five dollars for each log or piece of timber or lumber so found at large, and the said penalty may be sued for and recovered by any person finding such log or logs or lumber or timber so at large, together with the costs of the action, such penalty to belong to the person bringing the action.[3]

This section was derived from the Navigation Law of 1897, § 52, as amended by L. 1904, ch. 290, § 1. It was amended to read as above by L. 1914, ch. 402. The amendments are shown in the footnotes.

§ 53. Deposit of dead animals and debris in the Saint Lawrence river, prohibited. No person shall throw or cast any dead animal, carrion or offal, or other putrid or offensive matter in the waters of the Saint Lawrence river within the jurisdiction of this state; or any debris, coal ashes or other material, when such debris, coal ashes or other material shall diminish the natural depth of such navigable waters to less than twelve feet from low-water mark within one hundred feet of any dock, wharf or land, unless the owner or owners thereof consider such debris, coal ashes or other material necessary to fill in and improve such dock, wharf or water front. Every person violating any provision of this section

[1] Words "and each such log . . . marked to identify the owner," new.

[2] Sentence beginning "Every person" substituted for "Every person violating the provisions of this section shall forfeit to the town where the violation occurs the sum of one hundred dollars for every such violation."

[3] The last sentence formerly read: "The owner of any logs or timber or lumber, permitting the same to be floating at large in the waters of Lake George, shall be liable to a penalty of five dollars for each piece of logs or timber or lumber so found floating at large, and the said penalty may be sued for and recovered by any person finding such logs or lumber or timber so floating at large, together with the costs of the action, such penalty to belong to the person bringing the action."

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shall forfeit to the people of the state the sum of fifty dollars for every such violation and shall be liable to the owner and occupant of any premises injuriously affected by such violation for all damages sustained thereby.

This section was derived from the Navigation Law of 1897, § 53.

§ 54. Prevention of ice gorges in Saint Lawrence river. No person shall cut, loosen or detach from any bay, estuary, inlet or main or island shore of the Saint Lawrence river within the jurisdiction of this state, any field or large body of ice for the purpose or with the intent of using the same as a bridge between any islands of such river or between any island and the main shore, whereby the full, free and natural flow of the waters of such river shall be impeded, interfered with or threatened. The sheriff of Saint Lawrence county is hereby authorized to appoint one or more deputies of said sheriff, as shall to him seem necessary, to patrol said river, within said county, at such time or times as to him shall seem proper, and to arrest any person or persons there found engaged in performing or attempting to perform, any of the acts hereby forbidden; and the fees, charges and expenses of such deputy or deputies, for such service, shall be a county charge against such county, to be audited and allowed by the board of supervisors of said county and paid out of its treasury. Any person injured or liable to suffer injury from an ice gorge in such river may remove such ice gorge as far as it may interfere with or impede the full, free and natural flow of the waters of such river. This section shall not prevent the placing of an ice bridge from the south shore of Long Sault island to the American shore across the south channel of such river if such bridge shall not cause floating or anchor ice to jam or gorge at or above the point where it may be placed and shall not otherwise interfere with the full, free and natural flow of the water. If such bridge shall cause the ice to gorge or jam or shall interfere with the full, free and natural flow of the waters of such river, the party placing it must remove it on the application of any person injured or liable to be injured thereby. If such party refuses, the bridge may be removed and the party responsible therefor shall bear the charge and expense of such removal. This section shall not exempt par-

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ties constructing ice bridges in such river from their common-law liability.

This section was derived from the Navigation Law of 1897, § 54.

§ 55. Deposits in Racket river, Oswegatchie river and east branch of the Saint Regis river, prohibited. No corporation, company, person or persons shall deposit or put into the Racket, Oswegatchie or east branch of the Saint Regis rivers, in this state, any buttings, edgings, slabs, or other debris except sawdust and planer shavings from any mills engaged in the manufacture of shingles, wood or lumber upon or adjacent to such rivers to be floated down the same. Every person violating any provision of this section shall forfeit for every such violation the sum of fifty dollars, to be sued for and recovered by any person aggrieved thereby for his own use and benefit.

This section was derived from the Navigation Law of 1897, § 55.

§ 56. Pilotage fees, port of New York. The fees for piloting for the port of New York, by the way of Sandy Hook, are hereby established as follows: For every vessel inward bound and not exempted from pilotage by any law of this state, or any regulation thereunder, and drawing less than fourteen feet of water, two dollars and seventy-eight cents per foot; for every vessel drawing fourteen feet and less than eighteen feet of water, three dollars and thirty-eight cents per foot; for every vessel drawing eighteen feet, and under twenty-one feet of water, four dollars and thirteen cents per foot; for every vessel drawing twenty-one feet of water and upward, four dollars and eighty-eight cents per foot. If the master or owner of any vessel shall request the pilot to moor said vessel to any place within Sandy Hook, and not to be taken to the wharf or harbor of New York, or the vessel be detained at quarantine, the same pilotage shall be allowed, and the pilot entitled to his discharge. When any ship or vessel bound to the port of New York, and boarded by any pilot appointed by the board of commissioners of pilots of the city of New York, at such distance to the southward or eastward of Sandy Hook light-house, as that said light-house could not be seen from the deck of such ship or vessel in the daytime and in fair weather, the addition of one-fourth to the rates of pilotage hereinbefore mentioned shall be allowed to such pilot, provided the commander of such vessel shall

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have agreed to pay such addition. But such additional rate may be waived by the pilot boarding or offering his services to any vessel, and if waived he shall be taken on board and shall be entitled to pilot such vessel and to be paid at the ordinary rates established by law. In case of the refusal of the commander of any vessel to take such pilot after such waiver, he and the owner or consignee of the vessel shall be liable to pay such pilot at the ordinary rate, the same as if he had piloted the vessel to the port of New York. In case the same additional rate of pilotage is not waived by the pilot so boarding or speaking any vessel, the commander, owner or consignee shall not be liable to pay any pilotage, except that in case of failing to take a licensed pilot before such vessel reaches the port of New York the pilotage shall be paid at the ordinary rate to the pilot who first offered his services. Whenever the services of a pilot by the way of Sandy Hook shall be required to pilot any vessel sailing from any other port in the United States to the port of New York, application must first be made in writing by the master, owner or consignee of such vessel to the board of commissioners of pilots for such pilot, and the said board shall thereupon designate the pilots so to be employed in rotation according to the designated number of boats in the service, beginning with the lowest number, so that the company of every boat in the service shall, in their turn, have the right to avail of such employment and the board shall by proper by-laws enforce this regulation.

The pilotage on vessels outward bound not exempt from pilotage, shall be as follows:

For every vessel drawing less than fourteen feet of water, two dollars and two cents per foot.

For every vessel drawing fourteen feet, and less than eighteen feet of water, two dollars and thirty-three cents per foot.

For every vessel drawing eighteen feet, and less than twenty-one feet of water, three dollars and eight cents per foot.

For every vessel drawing twenty-one feet of water and upward, three dollars and fifty-six cents per foot.

This section was derived from L. 1884, ch. 90, §§ 1, 2, as amended by L. 1889, ch. 202, § 1.

For United States regulations relating to discrimination in rates of pilotage, see U. S. R. S., § 4237, Federal Statutes Annotated, title *Pilotage.*

Compulsory pilotage: see 39 L. R. A. 177. *Effect of partial invalidity of statute relating to pilots:* see Ann. Cas. 1916D 78 note.

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ARTICLE 5

TIDEWATER NAVIGATION

Section 60. Three feet depth to be maintained.
61. Supervisor to serve notice.
62. State engineer to inspect and report.
63. Injunction.
64. Application of this article.
65. Penalty.
66. Payment by city of New York.

§ 60. Three feet depth to be maintained. Whenever a municipal corporation shall divert or cause to be diverted the water, or a portion thereof, of a fresh water stream or streams outside the limits of an incorporated city flowing into a tidewater creek or estuary which tidewater creek or estuary before such diversion was navigable for vessels of twenty or more tons burden, it shall be the duty of the corporation so diverting or causing to be diverted such stream or streams of fresh water to keep said navigable tidewater creek or estuary deepened to the depth of at least three feet at low water mark from its mouth to the head of tidewater for the full natural width of said creek, and to maintain such navigable depth of water at all times, but in the county of Nassau it shall not be compulsory to maintain such depth to any greater width than fifty feet.

This section was derived from L. 1898, ch. 469, § 1, as amended by L. 1901, ch. 201, § 1.

Interfering with navigation: see PENAL LAW, § 1505.

Constitutionality.—All that this provision requires is a restoration of such a right of navigation where it has been impaired, which is so obviously just and so clearly within the power and duty of government that an act so providing and placing the burden on the community from which came the loss must be sustained. Cox v. New York, (1898) 26 Misc. 177, 55 N. Y. S. 74.

Strict or liberal construction.—While this provision obviously affects large and important interests, it is nevertheless clearly remedial and should be liberally construed to its declared and obvious purpose — to protect navigation in such creeks and estuaries. Cox v. New York, (1898) 26 Misc. 177, 55 N. Y. S. 74.

Nature of duties imposed.—It is reasonable to construe this section as meaning that if a city should in the future erect works or use any new means to diminish the flow of fresh water so as materially to decrease the existing navigable depth of three feet at low water, the city should restore the depth and width of the creek to such previous condition. The statute should not be construed otherwise than as meaning that if the city by some new means of diverting water decreases the navigability of a tidewater creek

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it must restore the conditions of navigability which existed when the statute was passed. Hempstead v. New York, (1900) 52 App. Div. 182, 65 N. Y. S. 14.

The provision in effect imposes a new obligation on all cities and villages which, in obtaining their water supply, divert the waters of fresh water streams flowing into any tidewater creek or estuary, which before was navigable for certain vessels. As applied to the city of New York, the duty which the act imposes is to so dredge or deepen, to the depth of three feet all such creeks or estuaries which were formerly fed or supplied from fresh water streams which the city diverts to its own use. Cox v. New York, (1898) 26 Misc. 177, 55 N. Y. S. 74. And the fact that a water company acquired all the rights of navigation by condemnation, which rights had passed to the city of New York, did not prevent the legislature from passing laws requiring the city of New York to restore navigability. Cox v. New York, (1898) 26 Misc. 177, 55 N. Y. S. 75.

Notice of claim.— In order to proceed under this section the petitioners must comply with the provisions of the charter of the city of New York requiring 30 days' notice or demand to be given to the comptroller before the institution of any action or special proceeding against the city. Cox v. New York, (1898) 26 Misc. 177, 55 N. Y. S. 74.

§ 61. Supervisor to serve notice. It shall be the duty of the supervisor of the town or the president of the incorporated village in which any such tidewater creek or estuary is located, in whole or in part, to serve written or printed notice on the chief officer of the municipal corporation so diverting water from the stream of fresh water, or on the superintendent or other person in charge of the works, at any time, of the fact of such tidewater creek or estuary not being maintained at the depth and width herein provided for, and the said municipal corporation shall within fifteen days thereafter, by dredging or otherwise, restore such navigable stream to the depth as specified by this article; and it shall not be lawful for such corporation to continue the diversion of any such fresh water stream after said fifteen days have expired from the time of serving such notice, until the tidewater creek or estuary into which any such stream flows shall have been deepened to the required depth and width. If such municipal corporation disputes any of the allegations of fact contained in such notice, it must within three days after receiving the notice cause a reply in writing to be served on the town or village officer whose name is signed thereto by delivering the same to him personally, or to the town clerk or village clerk as the case may be, and such reply in writing must state what alleged fact is disputed, and also clearly specify the reasons for controverting the allegations of fact contained in the notice.

This section was derived from L. 1898, ch. 469, § 2.

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§ 62. State engineer to inspect and report. In case of any controversy arising between such town or village officer and the said municipal corporation diverting such fresh water as to the depth or width of said tidewater creek or estuary, the state engineer and surveyor shall, within ten days after notice to him, cause said tidewater or estuary to be inspected and a report as to its condition to be filed in his office, and the depth at low-water mark as certified to by him shall be deemed correct, and the expense of such inspection shall be paid by the said municipal corporation, which corporation shall have fifteen days from and after the filing of such report in which to put such tidewater creek or estuary into the proper navigable condition herein provided for.

This section was derived from L. 1898, ch. 469, § 3.

§ 63. Injunction. At any time after fifteen days' notice has been given, as hereinabove provided for, by the supervisor of a town or the president of a village in which such tidewater creek or estuary is located, either of such officers, as the case may be, may apply to the supreme court for an injunction restraining said municipal corporation from diverting any fresh water from the stream or streams above until such tidewater creek or estuary shall have been put into the proper condition as to depth and width herein provided for, and it shall be the duty of the court to grant such injunction, and the costs of such proceeding shall be paid by the municipal corporation diverting such stream of water.

This section was derived from L. 1898, ch. 469, § 4.

Scope of injunction.—The remedy which this section provides for failure to so dredge or deepen is that the courts shall enjoin the city from continuing to divert or use the water of such fresh water streams. Cox v. New York, (1898) 26 Misc. 177, 55 N. Y. S. 74.

§ 64. Application of this article. The provisions of this article shall also apply in every respect to any stock corporation or association, or any individual diverting the water of a fresh water stream which would otherwise flow into a tidewater creek or estuary, and the service of any notice or other paper necessary in an action or otherwise shall be deemed to be served on such corporation or association, or on such individual, if served on the

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superintendent or other person in charge of the works by which the water is diverted from such stream.

This section was derived from L. 1898, ch. 469, § 5.

§ 65. Penalty. Any corporation or individual continuing to divert water from such fresh water stream without maintaining the navigable depth of the tidewater creek or estuary into which it flows, as herein provided for, shall be liable to a penalty of fifty dollars per day for each and every day such diversion is continued, computing from the expiration of forty days after notice is given as provided in section sixty-one, which penalty may be sued for and recovered by such supervisor or village president in the name of the town or village in which such tidewater creek is so located, and the amount recovered shall be paid into the treasury of such town or village.

This section was derived from L. 1898, ch. 469, § 6, as amended by L. 1901, ch. 209, § 2.

§ 66. Payment by city of New York. For the purpose of carrying out any work which may be required to be done by the city of New York under the provisions of this article, and to provide the means for doing such work, the board of estimate and apportionment of said city must at any time make the necessary appropriation therefor, to be levied and collected in the next annual tax levy, and when such appropriation is made the comptroller of said city in order to make such appropriation immediately available, shall issue and dispose of corporate stock of the city of New York, or other certificates of indebtedness, payable out of the next tax levy, which shall bear interest at a rate not to exceed four per centum and mature not more than eighteen months from the date of issue, and the amount realized therefrom, or so much thereof as may be necessary, shall be placed at the disposal of the commissioners of water supply or the chief officer of the city department having such work in charge. The commissioner of water supply in the city of New York is hereby authorized to enter into a contract with any person or corporation for the doing of said work, in the manner provided by section four hundred and nineteen of the Greater New York charter. The city of New York shall be relieved of all responsibility for

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the doing of any work herein provided for in the town of Hempstead in Nassau county by paying to the supervisor of said town the sum of ten thousand dollars per year, for five years beginning from the first day of July, nineteen hundred and one, which sums shall be raised by the comptroller as hereinbefore provided, and if authorized by a resolution duly passed by the board of estimate and apportionment, paid by him to the said supervisor instead of being placed at the disposal of the chief officer of the city department having charge of such work. The moneys so paid to the supervisor shall be by him expended in the improvement of such tidewater creeks or estuaries as shall lie either in said town, or shall separate said town from the town of Oyster Bay. Provided, however, that any expenditure for the improvement of a tidewater creek or estuary separating said towns shall be limited to the improvement of that portion thereof constituting such separation.

This section was derived from L. 1901, ch. 209, § 3, which added section 7 to L. 1898, ch. 469.

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ARTICLE 6

Rivers and Streams as Public Highways

Section 70. Dams and bridges.
71. Booms and other obstructions to be opened on notice; penalty for failure.
72. Condemnation to public use.
73. Marks on logs and timber to be recorded.
74. Persons prohibited from landing logs, timber or lumber.
75. Application of article.

§ 70. Dams and bridges. No dam shall be erected on any river or stream in this state, recognized by law or use as a public highway for the purpose of floating and running lumber, logs or other timber, over or upon the same, unless there be built in such dam an apron, at least fifteen feet in width, in the middle of the current of such river or stream, of a proper slope for the safe passage of lumber, logs and other timber. No bridge shall be built over any such river or stream in such a manner as to obstruct or prevent the free and uninterrupted passage of lumber, logs and other timber down and along such river or stream.

This section was derived from the Navigation Law of 1897, § 70.

Interfering with navigation: see Penal Law, § 1505.

Obstruction of canal navigation: see Canal Law, § 182.

Wilful injury to canals and drawing water from canals: see Penal Law, §§ 463, 464, 465.

Navigable stream as highway: see 70 L. R. A. 272 note. *Relative rights and duties of those maintaining bridges across streams and those floating logs therein:* see 38 L. R. A. (N. S.) 144 note; 22 L. R. A. (N. S.) 545 note. *Right of one who navigates stream or floats logs therein to abate nuisance arising from bridge:* see 51 L. R. A. (N. S.) 1172 note.

Stream as highway.—A stream is a highway for running logs if in its natural state it is capable of transporting logs or rafts. Brewster v. J. & J. Rogers Co., (1901) 169 N. Y. 73, 62 N. E. 164, 58 L. R. A. 495, affirming 42 App. Div. 343, 59 N. Y. S. 32. But streams and public waterways are not highways as understood by the framers of the constitutional provision contained in section 18, article III, of the Constitution. Matter of Burns, (1898) 155 N. Y. 23, 49 N. E. 246, reversing 16 App. Div. 507, 44 N. Y. S. 930. In this case the court said: "It is quite true that in a certain sense streams and waterways are highways. The term highway is frequently used in a very broad sense. The sea is said to be the great public highway of nations. The canals and all public rivers and the great lakes are certainly highways. So are all the railroads. But surely the framers of the Constitution did not use the term in any such broad and extensive sense. Manifestly it is there used in a much more limited sense. The term, in its ordinary and popular sense, refers to the country roads under the management and control of the

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local authorities of the several towns or counties of the state. It does not even include streets or avenues in cities, as this court has expressly held (In re Woolsey, 95 N. Y. 135), though it cannot be denied that such streets or avenues are highways in the broad sense that I have mentioned. The framers of the Constitution evidently used the term in its ordinary and popular sense, comprehending only the ordinary roads and highways under the care of local authorities. The very purpose of the restriction upon the power of the legislature was to remit to the local authorities such functions of government and administration as concerned the people of the locality and which could be better determined and discharged by such authorities than by the central legislative body at the capital of the state. There was no reason why the legislature should be permitted to deal with such a purely local question as the laying out or opening of a highway in a town any more than with the election of a supervisor. There was a general system of statute law under which highways, in the ordinary sense of the term, could be laid out and opened under the direction of local officers. But there never was any general law under which a waterway, which was private property, could be thrown open or dedicated to the use of the public. Indeed, it is very difficult to conceive how any such general law could be formulated at all that would be operative, in any reasonable or practicable way, to accomplish the result through the action of local authorities." See generally, CONSTITUTION, art. III, § 18 note.

§ 71. Booms and other obstructions to be opened on notice; penalty for failure. Every person who shall build any boom or other obstruction in the waters of any river or stream, for the purpose of stopping or securing lumber, logs or other timber, shall within ten days after the receipt of a written notice from any person who shall have lumber, logs or other timber to transport on such river or stream, open such boom or remove such obstruction or part thereof so as to permit the assorting and passage of such lumber, logs and other timber through and down such river or stream. Every person who wilfully obstructs, by booms or otherwise, the channel of any river or stream so as to hinder or delay the free passage of lumber, logs or timber over or through the same, shall be liable to a penalty of fifty dollars for each day of the continuance of such obstruction, to be recovered by the person aggrieved thereby, and in addition to such penalty, shall be liable for all damages caused by such obstruction.

This section was derived from the Navigation Law of 1897, § 71.
Interfering with navigation: see PENAL LAW, § 1505.

§ 72. Condemnation to public use. Any person desiring to use a river or stream in this state, which is or shall be recognized by law or use as a public highway, for running logs, timber or wood, by floating or flooding, may institute proceedings for the condemnation of the rights of riparian owners on such river or

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stream, to the extent that may be necessary, for the public use thereof as a highway for such purpose, pursuant to title one of chapter twenty-three of the code of civil procedure, known as the condemnation law.

This section was derived from the Navigation Law of 1897, § 72.

Constitutionality.—The fact that an act of the legislature authorizing the condemnation of a waterway as a public highway is passed at the instance of interested parties and is largely for their benefit, does not invalidate the statute, when in fact the waterway as improved will be open for public uses. Matter of Wilder, (1904) 90 App. Div. 262, 85 N. Y. S. 741. And the use by the public of a waterway to transport property from the interior of the state to the sea or the great lakes is a public use within the fair meaning of the constitution, and the legislature having determined the necessity for the exercise of the right of eminent domain, the validity of the act is not open to question on the ground that the use is not public. Matter of Burns, (1898) 155 N. Y. 23, 49 N. E. 246, reversing 16 App. Div. 507, 44 N. Y. S. 930. Formerly provision was made for acquiring rights for booms for the use of the party acquiring the same and this provision was held unconstitutional, the use not being a public use for which private property might be taken. Brewster v. J. & J. Rogers Co., (1901) 169 N. Y. 73, 62 N. E. 164, 58 L. R. A. 495, affirming 42 App. Div. 343, 59 N. Y. S. 32.

Private or local acts.—The passage of a local or private act declaring a waterway or stream open for public use to the public is not comprehended within the constitutional prohibition against passing such acts laying out or opening highways. Matter of Burns, (1898) 155 N. Y. 23, 49 N. E. 246, reversing 16 App. Div. 507, 44 N. Y. S. 930.

Compensation of owners.—A statute providing for compensation to "riparian owners" is not open to the objection that it does not provide for compensation to the owners of the bed of the stream, other than riparian owners, in the abesnce of a showing that such owners exist, the presumption being that "riparian owners" includes all persons having interest in the bed of the stream. Matter of Wilder, (1904) 90 App. Div. 262, 85 N. Y. S. 741.

Remedy to recover compensation.— Formerly any person floating or running lumber on any river had to furnish a bond of $5,000 for the protection of any person suffering loss or damage by reason thereof, and in case the amount of damages could not be amicably arranged by the parties interested the same was appraised by three commissioners appointed by the Supreme Court of the judicial district wherein the property was situated. This provision was held to exclude a common-law action for the damages sustained. Brewster v. J. & J. Rogers Co., (1901) 169 N. Y. 73, 62 N. E. 164, 58 L. R. A. 495, affirming 42 App. Div. 343, 59 N. Y. S. 32.

Public nature of use.—A waterway may become a public highway when once established if there is no limitation of its use to certain individuals; and a statute providing that after condemnation the petitioners "shall have the right to use said stream and tributaries as a public highway" has been held not designed to limit the use to the petitioners, but to fix the time when such use may commence. Matter of Wilder, (1904) 90 App. Div. 262, 85 N. Y. S. 741. The court said: "It is to be noted also that such use is as a public highway which precludes an appropriation by the petitioners alone. The damages awarded, while paid by those directly benefited, are upon the assumption that the stream is a public highway, and are the full measure of compensation to which the riparian owners are entitled, whoever may avail themselves of the privilege of floating logs down the stream. However a public highway may come into existence, when once established there is no

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limitation of its use to certain individuals. If so it is not a public highway. The framework of the act is founded upon the constitution of the stream as a public highway, and that is recognized in the clause referred to as well as throughout the entire act. The act itself closely follows in its title and context chapter 328 of the Laws of 1896, which was passed for a like purpose with the one under review, and the constitutionality of that act was upheld in the Matter of Burns (155 N. Y. 23). The only distinction between the two acts in the clause quoted, designed to designate the date when the petitioners may commence floating logs."

§ 73. Marks on logs and timber to be recorded. Every person who shall run any logs or timber down any river or stream recognized by law or use as a public highway shall select some mark different from any mark previously recorded, and shall put the same on each log or stick of timber in some conspicuous place, and shall cause such mark to be recorded in the county clerk's office of each county in or through which such river or stream runs. The county clerk shall be entitled to the sum of fifty cents for recording such mark, to be paid by the person having the same recorded, and a copy of said entry, certified by the clerk, shall be presumptive evidence that the logs or timber so marked are the property of the person by whom such mark was selected and recorded.

This section was derived from the Navigation Law of 1897, § 73.
Marks on floating timber: see supra, § 46.
Floating logs or defacing marks thereon: see PENAL LAW, § 1360.

§ 74. Persons prohibited from landing logs, timber or lumber. No person shall stop, take up or draw to, or lodge on the shore of any river or stream used for floating logs, timber or lumber, or on any island therein, any lumber, logs, timber, boards or planks floating in such river or stream, without the consent of the owner thereof. Any person violating the provisions of this section shall for each violation forfeit to the person aggrieved thereby the sum of ten dollars, and in addition thereto shall be liable to the owner of such logs, timber or lumber for all damages sustained thereby.

This section was derived from the Navigation Law of 1897, § 74.
Unlawfully floating logs: see PENAL LAW, § 1360.

§ 75. Application of article. This article shall not apply to the Hudson river, the Allegheny river and its tributaries, nor the Delaware river and its tributaries, nor the waters located in

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Franklin county, nor the Oswegatchie river and its tributaries, nor the Grass river and its tributaries, nor the Racket river and its tributaries, nor the West Canada creek and its tributaries, nor the Black river and its tributaries above its junction with the Moose river; nor be construed to repeal any existing law now applicable to any creek or river in this state.

This section was derived from the Navigation Law of 1897, § 75.

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ARTICLE 7*

WRECKS

Section 80. Recovery of wrecked property.
81. Powers and duties of sheriffs, coroners and wreck-masters.
82. Sale of wreck.
83. Delivery of wreck or proceeds to claimant.
84. Claimant's undertaking.
85. When owner may sue.
86. Claim for salvage.
87. Duties of wreck-masters.
88. Detention of wreck.
89. Appointment of appraisers.
90. Sale and disposition of property.
91. Publication of notices of sale.
92. Publication of notice of wrecked property.
93. Appointment of wreck-masters.

§ 80. Recovery of wrecked property. No ship, vessel or boat, nor any goods, wares and merchandise, cast by the sea or any inland lake or river upon the land, shall be deemed to belong to the people of the state as wrecked property, but may be recovered by the owner, consignee or person having the charge thereof at the time of the disaster by which the wreck was occasioned, upon the payment of a reasonable salvage and necessary expenses.

This section was derived from the Town Law of 1890, ch. 569, § 137.

Wilfully destroying vessel: see PENAL LAW, § 1506.

Fitting out or lading vessel with intent to wreck same: see PENAL LAW, § 1507.

Defacing marks upon wrecked property: see PENAL LAW, § 2481.

What constitutes a derelict: see 17 Ann. Cas. 939 note. *Ownership of derelict:* see 18 L. R. A. 695 note.

Definition of wreck.—A wreck is defined to be such goods as after a shipwreck are cast upon land by the sea, and left there, within some county. They are not wrecks so long as they remain at sea in the jurisdiction of the admiralty. Baker v. Hoag, (1853) 7 N. Y. 555, 59 Am. Dec. 431. This section related exclusively to such property as at common law is known as

* The report of the Board of Statutory Consolidation (1907), page 3816, has the following note in relation to this article: "This article is taken from the 'old' Town Law, L. 1890, ch. 569, §§ 137–150. The material is more appropriately in the Navigation Law than in the Town Law. L. 1890, ch. 569, is all repealed in the Town Law and therefore no repeal of these sections is inserted in the schedule of the Navigation Law."

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wrecks. In other words what was wrecked property at common law is wrecked property under the statute, in relation to which it was the intention of the legislature to make provision, and nothing beyond. Goods contained in a canal boat and remaining therein after the boat is sunk in a navigable river constitutes wrecked property. Baker v. Hoag, (1853) 7 N. Y. 555, 59 Am. Dec. 431.

Ownership of wrecks.— By the common law all wrecks belonged to the crown, and the property in them was lost to the owner. But our statute makes provision for the immediate sale of wrecked property if it is in a perishable state, and, if not, for its safe keeping for the space of one year for the true owner, to whom it is to be delivered on his paying reasonable salvage, and if not reclaimed within that time the property is required to be sold and the proceeds accounted for to the state. Baker v. Hoag, (1853) 7 N. Y. 555, 59 Am. Dec. 431.

§ 81. Powers and duties of sheriffs, coroners and wreck-masters. The sheriff, coroners and wreck-masters of every county in which any wrecked property shall be found, when no owner or other person entitled to the possession of such property shall appear, shall severally take all necessary measures for saving and securing such property; take possession thereof, in whose hands soever the same may be, in the name of the people of the state; cause the value thereof to be appraised by disinterested persons, and keep the same in some safe place to answer the claims of the persons entitled thereto.

This section was derived from the Town Law of 1890, ch. 569, § 138.

§ 82. Sale of wreck. If the property so saved shall be perishable, so as to render the sale thereof expedient, the officer, in whose custody the same shall be, shall apply to the county court of the county, or the city court of the city, where such property may be, by a verified petition stating the facts, for an order authorizing such sale; if the court shall be satisfied that a sale of the property would be most beneficial to the parties interested, it shall make the order so applied for, and the officer having custody of the property shall sell the same at public auction, at the time and in the manner specified in the order, and the proceeds of such sale, deducting the expenses allowed by the courts, shall be paid to the treasurer of the county in which the property shall have been found.

This section was derived from the Town Law of 1890, ch. 569, § 139.

§ 83. Delivery of wreck or proceeds to claimant. If, within a year after such wrecked property shall have been found and

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saved, any person shall claim the same or the proceeds thereof, as owner or consignee, or the agent of the owner or consignee, and shall establish his claim by evidence, such court shall make an order directing the officer, in whose possession the property or its proceeds shall be, to deliver or pay the same to the claimant, upon the payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping of the property.

This section was derived from the Town Law of 1890, ch. 569, § 140.

Officer unlawfully detaining wrecked property: see PENAL LAW, § 1482.

Keeping wrecked goods: see PENAL LAW, § 2480.

Ownership of derelict.— Unless a vessel has been utterly abandoned and is in contemplation of law a derelict, even bona fide salvors have no right to the exclusive possession and are bound to give up charge to the master on his appearing and claiming charge. The Young American, (1887) 31 Fed. 749.

§ 84. Claimant's undertaking. No such order shall, however, be made unless the claimant shall deliver to such court an undertaking with one or more sufficient sureties to be approved by the court, to the effect that he will pay all damages recovered against such claimant or his representatives, within two years after the date of the undertaking, by any person, establishing his title as owner of such property or proceeds. The undertaking shall be filed in the clerk's office of the county in which it shall be taken.

This section was derived from the Town Law of 1890, ch. 569, § 141.

§ 85. When owner may sue. The rejection by the court of any claim for wrecked property shall not preclude the claimant from maintaining an action for the recovery of such property or its proceeds against the officer in whose hands the same shall be; but if the plaintiff in any such action shall pervail, there shall be deducted, in addition to the salvage and expenses charged on the property, from the damages recovered, the costs of the defense.

This section was derived from the Town Law of 1890, ch. 569, § 142.

§ 86. Claim for salvage. Every officer to whom any order duly made, for the delivery of the wrecked property, or its proceeds, shall be directed, shall present to the claimant exhibiting such order a written statement of the claims for salvage and expenses on such property and proceeds. If the claimant shall refuse to allow such claims, the amount of such salvage and expenses shall

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be adjusted in the manner hereinafter provided, and, after the payment or tender of the payment of such salvage and expenses, as agreed to or adjusted, the officer, in whose custody such property or proceeds shall be, shall deliver or pay the same, according to the terms of the order directed to him.

This section was derived from the Town Law of 1890, ch. 569, § 143. It was amended to read as above by L. 1909, ch. 240, § 57. This amendment corrected an error by substituting the word "claimant" at the beginning of the second sentence in place of the word "defendant."

Maritime lien for salvage: see 70 L. R. A. 376 note. *Compensation in the nature of salvage:* see 64 L. R. A. 200 note. *Jurisdiction of admiralty over contract as to salvage:* see 66 L. R. A. 206, 232 note. *Where vessel causing peril and that claiming salvage have the same owner:* see 1 L. R. A. (N. S.) 873 note. *Rights of seamen as salvors:* see 64 L. R. A. 193 note. *Right to salvage where efforts of others are necessary to save property:* see 17 Ann. Cas. 1159 note. *Extinguishing fire on vessel as salvage service:* see 17 Ann. Cas. 911 note. *Review of salvage award:* see 20 Ann. Cas. 563 note.

Lien for salvage.— Prior to the enactment of the present provisions in regard to salvage, where the services rendered to save the wreck were strictly of the character of salvage services, for which the law provided a recompense, the same was a lien upon the goods saved. Baker v. Hoag, (1853) 7 N. Y. 555, 59 Am. Dec. 431.

§ 87. Duties of wreck-masters. Wreck-masters in the several counties shall give all possible aid and assistance to all vessels stranded on the coasts of their respective counties, and to the persons on board the same, and use their utmost endeavors to save and preserve such vessels and their cargoes, and all goods and merchandise which may be cast by the sea upon the land; and in the performance of these duties they shall employ such men as they may respectively think proper; and all magistrates, constables and citizens shall aid and assist the wreck-masters, when required, in the discharge of their duties.

This section was derived from the Town Law of 1890, ch. 569, § 144.

Cited.—This section was cited in The Young American, (1887) 31 Fed. 749.

§ 88. Detention of wreck. All sheriffs, coroners and wreck-masters, and all persons employed by them, and all other persons aiding and assisting in the recovery and preservation of wrecked property, shall be entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved, and the officer having the custody of such property shall detain the same until such salvage and expenses shall be paid, and the salvage claimed in any case shall not exceed one-half of the value of the

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property or proceeds, and every agreement, order or adjustment allowing a greater salvage shall be void.

This section was derived from the Town Law of 1890, ch. 569, § 145.
Officer unlawfully detaining wrecked property: see PENAL LAW, § 1482.
Keeping wrecked goods: see PENAL LAW, § 2480.
Seizure of canal obstructions: see CANAL LAW, § 183.

§ 89. Appointment of appraisers. If the amount of salvage and expenses on property saved shall not be adjusted by agreement of the parties, the owner or consignee of such property, or the master or supercargo, having charge thereof at the time the same was wrecked, or a claimant having an order for its delivery, may apply to the county court of the county or the city court of a city in which such property shall be, for the appointment of suitable persons as appraisers, to adjust the amount of such salvage and expenses; and such court shall, by an order, appoint three disinterested freeholders of the county, not inhabitants of the town in which the property shall have been saved, to adjust such salvage and expenses, who, before they shall enter upon the performance of their duties, shall be sworn to perform faithfully and impartially the duties of their trust. They shall have power to issue compulsory process for the attendance of witnesses, and to administer oaths to all witnesses who shall attend or be produced; and the written decision of the appraisers, or any two of them, as to the amount of salvage and expenses, and the sums to be paid to each person entitled to share in such salvage, or claiming such expenses, shall be final and conclusive. The fees and expenses of the appraisers shall be paid by the person upon whose application they shall have been appointed, and shall be a charge upon the property saved. Each appraiser shall be entitled to five dollars for each day's necessary attendance and expenses.

This section was derived from the Town Law of 1890, ch. 569, § 146.

§ 90. Sale and disposition of property. If within a year after wrecked property shall have been saved, no person shall have appeared to claim the same, or if the salvage and expenses on such property shall not have been paid within three months after the same shall have been adjusted, or an action for the recovery of the property shall have been commenced, the officer in whose custody the property shall be shall sell the same at public auction, and pay

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the proceeds of such sale, deducting salvage and expenses, into the treasury of this state, for the benefit of the parties interested; but in no case shall any deduction of salvage and expenses be made unless the amount thereof shall have been adjusted upon due proof, by an order of such county or city court, a copy of which order and of the evidence in support thereof shall be transmitted by the court making it to the comptroller. If the property has been sold as perishable, the balance of the proceeds, after deducting the salvage and expenses as adjusted, shall be paid by the county treasurer into the treasury of this state.

This section was derived from the Town Law of 1890, ch. 569, § 147.

§ 91. Publication of notices of sale. Public notice of every sale to be made of wrecked property, under the provisions of this article, shall be published by the officer making the sale, for at least two weeks in succession, in one or more of the newspapers published in the county where the property shall have been saved. Every such notice shall state the time and place of the sale, and shall contain a particular description of the property intended to be sold.

This section was derived from the Town Law of 1890, ch. 569, § 148.

§ 92. Publication of notice of wrecked property. Every sheriff, coroner or wreck-master, into whose possession any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties interested, for at least four weeks in succession, in one or more of the newspapers published in the county where the property shall have been saved. Every such notice shall contain a minute description of such wrecked property, and every bale, bag, box, cask, piece or parcel thereof, and of the marks, brands, letters and figures on each, and shall state where such wrecked property then is, and its actual condition, and the name, if known, of the vessel from which it was taken or cast on shore, and of the master and supercargo of such vessel, and the place where such vessel then is, and its actual condition. The expense of publishing every notice required to be published relating to wrecks shall be charged on the property or proceeds to which it relates.

This section was derived from the Town Law of 1890, ch. 569, § 149.
Defacing marks upon wrecked property: see PENAL LAW, § 2481.

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§ 93. Appointment of wreck-masters. There shall continue to be fifteen wreck-masters for the county of Suffolk, twelve in the county of Queens, three in the county of Kings, two in the county of Richmond and two in the county of Westchester, who shall hold their offices for two years, and be appointed by the governor.

This section was derived from the Town Law of 1890, ch. 569, § 150.

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ARTICLE 8

Application; Laws Repealed; When to Take Effect

Section 100. Application.
101. Laws repealed.
102. When to take effect.

§ 100. Application. This chapter shall be applicable to all vessels navigating the waters within the jurisdiction of this state, except that vessels having a certificate of inspection from the United States board of supervising inspectors of steam vessels in force at the time shall not be subject to the provisions of section six of this chapter,[1] and except that the provisions of this chapter shall not apply to vessels upon any of the waters of the state which are governed by a special navigation law. Nothing in this chapter shall be so construed as to suspend the provisions of sections three hundred and forty-two to three hundred and forty-five, both inclusive, of the Greater New York charter.

This section was derived from the Navigation Law of 1897, § 100, as amended by L. 1903, ch. 420, § 1 pt. The remainder of that section was consolidated in section 1. It was amended to read as above by L. 1913, ch. 765, § 6. The amendment is shown in the footnote.

Private vessels.—As the section formerly read it would seem that boats employed by Barge canal contractors, where they were chartered and the contractor himself furnished the crew and equipment, were considered as the property of the contractor for the time being, and therefore "private boats" and exempt from all provisions of the Navigation Law save sections 11 and 12. Op. Atty.-Gen. (1909) 828.

§ 101. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 102. When to take effect. This chapter shall take effect immediately.

[1] Words "and that private vessels shall be subject only to the provisions of sections eleven and twelve of this chapter," omitted.

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Schedule of Laws Repealed

Revised Statutes.... Part 1, chapter 9, title 7, sections....7–9
Revised Statutes.... Part 1, chapter 20, title 10, ...All
Revised Statutes.... Part 1, chapter 20, title 15, sections..12–14

Laws of	Chapter	Section
1784.....	32.....	All
1784.....	6.....	All (8th sess.)
1786.....	61.....	7
1787.....	84.....	All
1807.....	47.....	All
1809.....	85.....	All
1812.....	215.....	All
1813.....	183.....	All
R. L. 1813...	34.....	All
R. L. 1813...	86.....	275–310
1814.....	186.....	All
1814.....	22.....	All (38th sess.)
1815.....	146.....	All
1815.....	205.....	All
1815.....	240.....	All
1817.....	198.....	All
1818.....	266.....	All
1828.....	175.....	All
1828.....	21.....	1, ¶¶ 146, 478, 536 (2d meet.)
1829.....	314.....	All
1831.....	93.....	All
1832.....	156.....	All
1837.....	153.....	All
1837.....	356.....	All
1839.....	112.....	All
1839.....	175.....	All
1839.....	349.....	All
1841.....	65.....	All
1841.....	192.....	All
1844.....	89.....	All
1844.....	248.....	All
1848.....	321.....	All
1849.....	411.....	All

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Laws of	Chapter	Section
1850.....	72.....	All
1851.....	192.....	All
1853.....	467.....	All
1854.....	196.....	All
1855.....	556.....	All
1857.....	243.....	All
1857.....	367.....	All
1860.....	103.....	10–15
1860.....	254.....	All
1860.....	522.....	1, 2
1862.....	428.....	All
1862.....	479.....	All
1865.....	137.....	All
1865.....	262.....	All
1865.....	569.....	All
1865.....	712.....	All
1866.....	100	All
1866.....	374.....	All
1867.....	311.....	All
1867.....	930.....	All
1870.....	548.....	All
1871.....	253.....	All
1871.....	277.....	All
1875.....	378.....	All
1876.....	376.....	All
1879.....	204.....	All
1879.....	456.....	All
1880.....	215.....	All
1880.....	395.....	All
1880.....	533.....	All
1880.....	541.....	1
1881.....	16.....	All
1881.....	74.....	All
1881.....	493.....	All
1883.....	331.....	All
1884.....	90.....	All
1885.....	116.....	All
1885.....	136.....	All

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Laws of	Chapter	Section
1885.....	277.....	All
1886.....	204.....	All
1887.....	382.....	All
1888.....	314.....	All
1889.....	202.....	All
*1890.....	569.....	§§ 137 to 150, both inclusive
1891.....	194.....	All
1891.....	385.....	All
1896.....	683.....	All
1897.....	483.....	All
1897.....	592.....	All
1898.....	419.....	All
1898.....	469.....	All
1901.....	209.....	All
1901.....	378.....	All
1901.....	633.....	All
1902.....	613.....	All
1903.....	169.....	All
1903.....	420.....	All
1904.....	290.....	All
1905.....	74.....	All
1905.....	306.....	All
1905.....	359.....	All
1905.....	505.....	All
1907.....	197.....	All
1907.....	520.....	All

NOTES TO SCHEDULE OF REPEALS

Prepared by the Board of Statutory Consolidation and printed in their report of 1907, *at page* 3816.

R. S., Pt. 1, Ch. 20, Tit. 15, § 12. Consolidated in Navigation Law, § 46.

L. 1784, Ch. 6. Statute cited relates to establishment of custom house and appointment of customs officers. Obsolete.

L. 1786, Ch. 61, § 7. Suspends the act relating to custom house and officers (L. 1784, Ch. 6). Abrogated and obsolete.

* Inserted and expressly repealed by L. 1909, ch. 240, § 99.

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L. 1787, Ch. 84. Relates to removal of obstructions to navigation in Hudson river. Temporary and obsolete.

L. 1807, Ch. 47, L. 1812, Ch. 215. Relate to obstructions in Hudson river. L. 1807, Ch. 47, comes within purview of Rev. L. of 1813, Ch. 47, and L. 1812, Ch. 215, comes within purview of Rev. L. of 1813, Ch. 34. L. 1813, Ch. 202, repeals all acts which comes within the purview or operation of any of the acts commonly called the revised laws.

As the statutes covered by express repealing acts have been repealed by the Consolidated Laws, the repealing statutes have been recommended for repeal.

L. 1814, Ch. 22. Relates to vessels in port of New York "during the present war with Great Britian." Temporary and obsolete.

L. 1815, Ch. 240. Continues L. 1813, Ch. 183, in force "until the first day of April, in the year one thousand eight hundred and eighteen," Temporary and obsolete. Also L. 1813, Ch. 183 (which statute cited extends), has been repealed by L. 1881, Ch. 537, § 1, and by L. 1819, Ch. 18, § 39.

L. 1829, Ch. 314. Amends R. S., Pt. 1, Ch. 20, Tit. 10, § 10. That portion of the Revised Statutes is repealed by L. 1897, Ch. 592, § 80, which repeals also "all acts amendatory" of any of the acts thereby repealed.

L. 1860, Ch. 103, §§ 10–15. Sections 10–12 have been repealed. Sections 13 and 14 are dependent on the preceding sections of the act which have been repealed. Section 15 provides when act takes effect.

L. 1862, Ch. 479. Statute affected amends L. 1860, Ch. 254, § 7, and L. 1896, Ch. 548, § 1, repeals L. 1860, Ch. 254, § 7, and the whole of said act, together with "all laws amendatory of the laws repealed."

L. 1867, Ch. 936. Statute cited amends L. 1865, Ch. 115, which act was repealed by L. 1896, Ch. 548, which also repeals any act amendatory thereof. L. 1865, Ch. 115, was itself an amendatory law of one expressly repealed. Statute cited is repealed, under the amendatory clause of the repealing act.

L. 1884, Ch. 90. Section 1 was amended "to read as follows" by L. 1889, Ch. 202, § 1. Section 2 is consolidated in Navigation Law, § 56.

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L. 1887, Ch. 382. Section 1 repealed. Balance of act obsolete.

L. 1889, Ch. 202. Consolidated in Navigation Law, § 56.

L. 1897, Ch. 592. This statute, which is the "old" Navigation Law, is recommended for repeal because its live provisions have been incorporated in Navigation Law. Sections 1, 3, 5, 6, 11, 13–16, 19, 24, 29, 52, 72, 76 were amended so as to read as follows:

L. 1898, Ch. 419. L. 1897, Ch. 592, § 80 (Navigation Law), expressly repeals L. 1880, Ch. 533, and statute affected purports to amend this law (L. 1880, Ch. 533), which was then repealed. It was superseded by L. 1901, Ch. 633, which amended § 76 of the Navigation Law. Inoperative and obsolete.

L. 1898, Ch. 469. Consisted of seven sections. Sections 2–5 consolidated in Navigation Law, §§ 61–64. Balance of act has been amended to read as follows, except § 7, which states when act takes effect.

L. 1901, Ch. 209. Consisted of five sections. Section 4 is a repeal and § 5 states when act shall take effect. Sections 1 and 2 consolidated in Navigation Law, §§ 60, 65. Balance superseded by L. 1903, Ch. 169, § 1.

L. 1901, Ch. 633. Consolidated in Navigation Law, § 75.

L. 1902, Ch. 613. Section 1 consolidated in Navigation Law, § 72. Section 2 is a repealing section and the repeal has been noted in the schedule.

L. 1903, Ch. 169. Consolidated in Navigation Law, § 66.

L. 1903, Ch. 420. Section 1 of statute cited amends L. 1897, Ch. 592, §§ 1, 5, 6, 11, 13, 14, 16 and 19, and has been consolidated in Navigation Law as §§ 1, 80, 5, 6, 11, 13, 14, 16 and 19, respectively. Section 2 consolidated in Navigation Law, § 24. Section 3 consolidated in Navigation Law, § 29. Section 4 consolidated in Navigation Law, §§ 30–33.

L. 1904, Ch. 290. Consolidated in Navigation Law, § 52.

L. 1905, Ch. 74. Consolidated in Navigation Law, § 15.

L. 1905, Ch. 306. Consolidated in Navigation Law, § 35.

L. 1905, Ch. 359. Consolidated in Navigation Law, § 34.

L. 1907, Ch. 197. Consolidated in Navigation Law, § 36.

L. 1907, Ch. 520. Consolidated in Navigation Law, § 3.

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INDEX TO NAVIGATION LAW

[*References are to sections*]

Accidents to be reported, § 30
Allegany river, public highway, exception, § 75
Anchors, motor boats, § 39b
Annual report of inspectors, § 27
Axes, § 15
Beacons to mark obstructions, location, § 50a
Black river, public highway, exception, § 75
Boilers —
  inspection and test, § 6
  manufacturer's duties, § 29
Booms, on rivers and streams, § 71
Bridges, rivers and streams as public highways, § 70
Buckets, § 15
Buoys —
  location to mark obstructions, § 50a
  Niagara river, mooring to, § 50
Canal boats, towage, regulation, § 28
Canoes, lights, § 12 (5)
Certificate of inspection, § 7
Condemnation of rights of riparian owners, § 72
Construction of excursion vessels, § 35
Coroners, wrecks, powers and duties, § 81
Dams, rivers and streams as public highways, § 70
Definitions —
  master, § 2
  motor boats, § 37
  steamboat, § 2
  steam vessel, § 2
Delaware river, public highway, exception, § 75
Engineer —
  boiler, accident to, report, § 31
  boiler repairs, report, § 31
  license, § 17
  racing, § 23
Excursion barge —
  axes, § 15
  buckets, § 15
  life preservers, § 15
Excursion vessel, construction, § 35
Fees for inspections and licenses, § 34
Ferry boat —
  buckets, § 15
  life boats, § 14
  life preservers, § 15
Fire extinguishers, motor boat, § 39b
Grass river, public highway, exception, § 75
Gravel, removal on Long Island Sound, § 51
Harbor masters, Hudson river, appointment, jurisdiction, § 47
Hudson river —
  harbor masters, § 47
  ice gorges, removal, § 40a
  lights upon swing-bridges, § 45
  mud scows, towage, restriction, § 41
  obstruction, § 40
  public highway, exception, § 75
  rafts, lights, § 43
  steamboats, escape of sparks, § 42
  timber, marks on floating, § 46
  wharfage, § 44
Ice gorges —
  Hudson river, removal, § 40a
  St. Lawrence river, § 54
Injunction, tidewater, diversion, § 63
Inspection —
  certificate, § 7
  fees, § 34
  motor boats, § 39c
  notification and request for, § 32
Inspectors —
  annual report, § 27
  appointment, compensation, qualifications, tenure, § 4
  boilers, inspection and test, § 6
  duties and powers, § 5
  life preservers, duties, § 15
  motor boats, powers, § 39d
  special, appointment, § 39e
  vacancy, removal, § 4
Lake Champlain, towage, regulation, § 28
Lake George —
  dead animals, § 52
  rafts, § 52
Lamps, regulations, § 18
License, § 17
  engineer, § 17
  fees, § 34
  master, § 17
  motor boats, § 39c
  pilot, § 17
Life boats, § 14
Life floats, see Life preservers
Life preservers, § 15
  motor boats, § 39a
Lights on rafts, Hudson river, § 43
Lights on vessels, § 12
Lights on vessels, motor boats, see Motor boats
Lights upon swing-bridges, Hudson river, § 45

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[*References are to sections*]

Logs and timber —
marks to be recorded, § 73
stopping or landing, prohibition, § 74
Long Island Sound, removal of gravel, § 51
Master —
defined, § 2
good conduct, liability of owner, § 25
license, § 17
navigation law, posting copy, § 26
racing, § 23
Motor boats —
anchors, § 39b
defined, classification, § 37
fire extinguishers, § 39b
inspection, § 39c
inspector's powers, § 39d
law and rules to be carried, § 39f
license, § 39c
life preservers, § 39a
lights to be carried, § 38
penalties, § 39d
whistles to be carried, § 39
Mud scows, towage, restriction, § 41
Names of vessels, § 19
Navigation, tidewater, see Tidewater navigation
Navigation Law —
application, § 100
laws repealed, § 101
posting copy, § 26
short title, § 1
when to take effect, § 102
New York port, pilotage fees, § 56
Niagara river, buoys, mooring to, § 50
Obstructions in Hudson river, § 40
Oswegatchie river —
debris, deposit in, § 55
public highway, exception, § 75
Owner's liability, § 25.
Passengers —
method of landing, §§ 20, 21
number to be carried, § 8
Penalties, § 33
motor boats, § 39d
Pilot, license, § 17
Pilotage fees, port of New York, § 56
Racing, § 23
Racket river —
debris, deposit in, § 55
public highway, exception, § 75
Rafts —
Hudson river, lights, § 43
Lake George, regulations, § 52
Regattas —
regulations for conduct, § 36
Repairs, report to inspectors, § 31
Riparian owners, condemnation of rights, § 72
Rivers and streams —
booms and obstructions, § 71
condemnation to public use, § 72
dams and bridges, § 70
public highways, exceptions from application, § 75
Row boats, lights, § 12(5)
Rules, sailing, § 11
Safety valve, interference, § 16
Sailing rules, § 11
St. Lawrence river —
dead animals and debris, § 53
ice gorges, § 54
St. Regis river, deposit of debris, § 55
Sheriffs, wrecks, powers and duties, § 81
Sparks from steamboats, Hudson river, § 42
Stairways and gangways, § 10
State engineer, tidewater navigation, duties, § 62
Steamboat —
accidents to be reported, § 30
axes, § 15
buckets, § 15
construction, § 9
defined, § 2
inflammable or explosive articles in cargo, § 22
licenses, § 17
life boats, § 14
life preservers, § 15
names, § 19
officers, inability to provide licensed, § 24
owner's liability, § 25
passengers, method of landing, §§ 20, 21
racing, § 23
safety valve, interference, § 16
towage of mud scows, restriction, § 41
towing, compensation, regulation, § 28
Steam fire pump, § 13
Steam vessel (see also Steamboat)
accidents to be reported, § 30
axes, § 15
boiler repairs, report, § 31
buckets, § 15
defined, § 2
inspection, notification and request, § 32
licenses, § 17
life boats, § 15
life preservers, § 15
names, § 19
officers, inability to provide licensed, § 24
owner's liability, § 25
passengers, number to be carried, § 8

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[*References are to sections*]

Steam vessel — *Continued*
racing, § 23
safety valve, interference, § 16
steam fire pump, § 13
Streams as public highways, see Rivers and streams
Superintendent of public works —
duties, § 3
inspector, appointment, § 3
regattas, regulations for conduct, § 36
special inspectors, appointment, § 39e
Tidewater navigation —
depth, three feet to be maintained, § 60
New York city, provisions, § 66
Tidewater navigation, diversion of water —
injunction, § 63
inspection and report, state engineer, § 62
penalty, § 65
provisions, application, § 64
supervisor's duties, § 61
Timber (see also Logs and timber) —
marks on floating, Hudson river, § 46
Tugs, mud scow towage, restriction, § 41
Vessels —
accidents to be reported, § 30
certificate of inspection, § 7
life boats, § 14
lights, § 12
Vessels — *Continued*
names, § 19
officers, inability to provide licensed, § 24
owner's liability, § 25
passenger, stairways and gangways, § 10
Vessels, steamboats, see Steamboat
Vessels, steam vessels, see Steam vessel
West Canada Creek, public highway, exception, § 75
Wharfage along Hudson river, § 44
Wreck masters —
appointment, § 93
powers and duties, §§ 81, 87
Wrecks —
action for recovery by claimant, § 85
appraisers, appointment, § 89
claimant's undertaking, § 84
coroners, powers and duties, § 81
delivery of wreck or proceeds to claimant, § 83
detention until salvage paid, § 88
notice of wrecked property, publication, § 92
sale and disposition of property, §§ 90, 91
sale of property, § 82
salvage claim, § 86
sheriffs, powers and duties, § 81
wrecked property, recovery, § 80
wreck masters, powers and duties, §§ 81, 87

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INDEX TO ANNOTATION

[References are to pages]

Automobiles carrying gasoline as freight, 27
Condemnation, rivers and streams as public highways, see Rivers and streams, condemnation for public use
Definitions —
  private vessel, 10
  tonnage, 10
  tug boats as within navigation law, 10
  wharfage, 41
  wreck, 60
Derelicts, ownership, 62
Docks, use, owner's intention, 41
Ferry propelled by motor boat, inspection, 37
Gasoline in automobiles, 27
Harbormasters —
  Hudson river, see Hudson river
  tidewater navigation, maintenance, constitutionality, 50
Highways, rivers and streams, 55
Hudson river —
  harbormasters, fees, constitutionality, 43
  wharfage, see Wharfage, Hudson river
Inflammable articles, gasoline in automobile, 27
Injunction, tidewater navigation, see Tidewater navigation, maintenance
Inspection, ferry propelled by motor boat, 37
Lien for salvage, 63
Navigation —
  nature of right, 9
  tidewater, see Tidewater navigation, maintaining
Private vessel—
  barge canal, exemption, 67
  defined, 10
Right of navigation, nature, 9
Rivers and streams as highways, 55
Rivers and streams, condemnation to public use —
  compensation, remedy to recover, 57
  constitutionality, 57
  public nature of use, 57
  statutes, private or local, effect, 57
Row boats subject to navigation law, 21
Rules of the road, see Sailing rules
Sailing rules —
  canal boats, 20
  passing boats, 20
  row boats, 21
  signals, passing boats, effect, 21
  vessels at anchor, passing vessels, 21
Salvage, lien for, 63
Signals, see Sailing rules
Stream as highway, 55
Superintendent of public works —
  public printing, 12
  tug boats, jurisdiction, 13
Tidewater navigation, maintenance —
  claim, notice of before beginning action, 51
  construction of provisions, 50
  duties imposed, nature, 50
  injunction, scope, 52
Tonnage defined, 10
Tug boats —
  navigation law, regulation, 10
  superintendent of public works, jurisdiction, 13
Wharfage defined, 41
Wharfage, Hudson river —
  cities' right to collect, 42
  fees for use, basis for charges, 42
  nature of use, 41
  owner's rights, grant of land under water, 42
  vessels engaged in interstate commerce, 42
Wreck —
  defined, 60
  ownership, 61

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